

## **RESEARCH MATERIAL**

**SB 1149 (Raised) Compiled State-DC-US Laws and Analysis for recording telephonic communications.**

**Submitted: Lawrence Jezouit**

**Title: Intercepting a Wire Communication: An Analysis – Who\*** (See page 2 below.) is Authorized to Intercept under the Federal Code and Other Jurisdictions' Laws?

**The Parameters:**

**Key Question:** May one ask for consent to intercept a wire communication from oneself? (See Background and Rationale re Key Question: section below.) The preceding question is meant to apply within the context of a given jurisdiction's wire communication intercept law only when the enacted language dictates that the question be asked.

It must be noted that the concept of "free will" has not been cast aside for it may be naturally exercised at any time when a jurisdiction's statutes are silent on the matter of whether or not a party is permitted to intercept such wire communication.

**Key Terms:**

**Consent.** As used in the Analysis portion, "consent" means ensuring that one has permission to intercept a "wire communication" before the fact and the consent must be in at least one of the following forms as defined in a generally accepted legal dictionary: express, implied or informed.

**Wire Communication (by another name):** One must take into account that the term "wire communication" is a defined term under 18USC2510(1). However, other jurisdictions may have coined another term to serve that same purpose, e.g., Alabama uses "private communication" in conjunction with the definition "Eavesdrop," California defines a "confidential communication," and in one section Connecticut uses an undefined term "private telephonic communication" but also defines "wire communication" in another section.

**Restricted Analysis:**

(1) Title III of Public Law 90-351, OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968, enacted 18USC2510 Definitions. Title I of Public Law 99-508, ELECTRONIC COMMUNICATIONS PRIVACY ACT OF 1986 enacted amendments to 18USC2510 by modifying and adding definitions. Although there have been subsequent amendments, from 1986 forward, there were and are in existence three defined types of communication – wire, oral and electronic. The analysis in this document focuses on "**wire communication**" that would also be popularly known as a "phone call." 18USC2510's history is set out below and is current through December 31, 2010.

(Added Pub. L. 90-351, title III, § 802, June 19, 1968, 82 Stat. 212;  
amended Pub. L. 99-508, title I, § 101(a), (c)(1)(A), (4), Oct. 21, 1986, 100 Stat. 1848, 1851;  
Pub. L. 103-414, title II, §§ 202(a), 203, Oct. 25, 1994, 108 Stat. 4290, 4291;  
Pub. L. 104-132, title VII, § 731, Apr. 24, 1996, 110 Stat. 1303;  
Pub. L. 107-56, title II, §§ 203(b)(2), 209(1), 217(1), Oct. 26, 2001, 115 Stat. 280, 283, 290;  
Pub. L. 107-108, title III, § 314(b), Dec. 28, 2001, 115 Stat. 1402;  
Pub. L. 107-273, div. B, title IV, § 4002(e)(10), Nov. 2, 2002, 116 Stat. 1810.)

(2) In order to reduce the complexity of the analysis, laws that operated to permit an interception by law enforcement personnel (including foreign intelligence gathering), emergency services notifications, communications available to the public, first amendment right, e.g., reporting news, official acts of wire communication service providers or official acts of the Federal Communications Commission were bypassed.

(3) As indicated in the Title section above, the word **Who**\* has been “flagged” for the purpose of signifying an association with the **\*Word Aids:** section. (For the computer Excel 2007 or later file version, select the **Analysis** tab.) See the top row that contains the words: intent, knowing, willful and proviso. Each jurisdiction’s analysis was performed with a mindset of **not including** those instances of a wire communication intercept where the intercept would have been done contrary to a law’s element that accounts for conduct that would be found to be “intentional,” “knowingly,” “willfully,” etc. In other words, an intercept done “unintentionally” could, in the strictest sense, be considered as “authorized by the Legislature” but it will not be listed. However, **[Proviso]** is used to indicate that an element such as “secretly” or “privately” is accounted for within the analysis.

**Background and Rationale re Key Question:** Of necessity, to complete a somewhat detailed analysis of fifty-two jurisdictions’ wire communication intercept laws and then enumerate who was permitted to complete such intercept, it was determined that there must be a reasonable benchmark that would offer a simple “yes-no” answer to any scenario encountered during the analysis when a party to any given wire communication was a factor to the intercept.

There exists a general theme that has been adopted by academics and others, who study, practice law, write about or report on the subject of wire communication intercepts. In general, the theme classifies a jurisdiction’s wire communication intercept laws as being either “one-party” or (“two-party” or “all-party”) consent. At best the set of “coined terms” offer an undefined concept open to interpretation by anyone who uses them. Most likely, there is no authoritative definition for or set of associated rules that would be suitable to use to accurately designate who was permitted to intercept any given wire communication. Unfortunately, some caselaw has taken the step of elevating a coined shorthand phrase into an imprecise “rule,” which in turn adds false credence to myth. See *Lane v. Allstate* 969 P.2d 935, 944 NV S. Ct. (1998); *Lucas v. Fox Network News* 1:99-cv-2638-CAM 1, 19; 2000 U.S. Dist. LEXIS 22834 1, 7. For all practical purposes trying to fit a wire communication intercept law into the one-party v. two/all party scheme results in a confused and an irrational outcome. Of all the designated so called “all-party consent” jurisdictions only Maryland allows a party to intercept and, in general, those remaining only allow a non-party to intercept. See **Rationale to substantiate why a so called “all party consent state” permits a non-party intercept only:**... below.

Those who are familiar with wire communication intercept caselaw know that it is not infrequent to find that opinions within that caselaw have incorporated those terms. Various opinions have also coined the use of “third party” in an attempt to describe who intercepted or who was permitted to intercept any given wire communication. As an example, see *Sullivan v. Gray* 324 N.W. 2d 58, 60 (1982).

After some consideration, it was concluded that the “one-party” or (“two-party” or “all-party”) classification is inadequate. Then after gaining a general understanding of the federal and each jurisdiction’s wire communication intercept laws, it was determined that the hierarchy of the U. S. legislative system should be used as the framework to answer the “Key Question.” (See page 1 of 5 above under **The Parameters:**.) The answer is no. One may not ask for consent from oneself to intercept a wire communication. Under the U.S. Code, Congress has legislatively bestowed consent for a party to intercept any given wire communication. The principle of legislatively bestowed consent to a party has flowed directly to at least 25 states that have used the federal language as their own.

The rationale is that the Congress answered the question when it enacted 18USC2511(2)(d) that reads in relevant part:

(d) It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire ... communication **where such person is a party to the communication....**

[Emphasis added.]

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Congress's intent was set out in §801 of P.L. 90-351. Of the section's four subsections, subsection (b) provides the most insight into why Congress chose to regulate the conduct of a party to a wire communication. Subsection (b) is set out below:

(b) In order to protect effectively the privacy of wire and oral communications, to protect the integrity of court and administrative proceedings, and to prevent the obstruction of interstate commerce, **it is necessary for Congress to define on a uniform basis the circumstances and conditions under which the interception of wire and oral communications may be authorized**, to prohibit any unauthorized interception of such communications, and the use of the contents thereof in evidence in courts and administrative proceedings. [Emphasis added.]

Additionally, Senate Report 90-1097 explains Congress's intent and enumerates caselaw citations as the source that justifies the language of what was to be enacted; 18USC2511(2)(d). The relevant text of Senate Report 90-1097 is set out below:

Paragraph (2)(c) provides that **it shall not be unlawful for a party to any wire or oral communication or a person given prior authority by a party to a communication to intercept such communication**. It largely reflects existing law. **Where one of the parties consents, it is not unlawful**. (Lopez v. United States, 83 S.Ct. 1381, 373 U.S. 427 (1963); Rathbun v. United States, 78 S.Ct. 161, 355 U.S. 107 (1957); On Lee v. United States, 72 S.Ct. 967, 343 U.S. 747 (1952)). **Consent may be expressed or implied**. 1968 U.S.C.C.A.N. 2112, 2182 [Emphasis added.]

In conclusion, when analysis is being conducted on any applicable element of a jurisdiction's wire communication intercept law, the "Key Question" is asked for the purpose of determining the "Entity Authorized to Intercept."

**Rationale to substantiate why a so called "all party consent state" permits a non-party intercept only: Key Question: ( May one ask for consent to intercept a wire communication from oneself?) Answer: (No)**

As an example, an analysis of §§ 5704(4) of the Consolidated Statutes of Pennsylvania proves that the Consolidated Statutes of Pennsylvania provide for a non-party intercept only and are **SILENT** with regard to whether or not a party is permitted to intercept a wire communication.

The subsection operates in a manner that requires **all parties to consent**, which then permits a non-party to intercept. Therefore, the Consolidated Statutes of Pennsylvania are **silent** with regard to whether or not a party is permitted to intercept the wire communication. This analysis also applies to California's §§632(a), Connecticut's 52-570d(a)(1), Delaware's §§1335(a)(4), Florida's §§934.03(2)(d), Illinois §14-1 and §§14-2(a)(1)(A), Massachusetts §§99.B.4., Montana §§45-8-213(2), New Hampshire §§570-A:2.I(a), and Washington §§9.73.030(1)(a).

§ 5704. Exceptions to prohibition of interception and disclosure of communications.

...

It shall not be unlawful and no prior court approval shall be required under this chapter for:

...

(4) A person, to intercept a wire, ... communication, where all parties to the communication have given prior consent to such interception.

NOTE: The purpose of this NOTE is to demonstrate that the language of PA's § 5704 is the **exact same language as that of the federal law (18USC2511(2)(d))** and that PA's § 5704 was sourced from same except that the word "all" replaced the word "one" and that the word "has" was replaced by the word have "have" in order to achieve the correct tense - past tense. It is important to understand that PA's § 5704 is sourced after 18USC2511(2)(d)'s **disjunctive "or"** that separates the federal's language into two distinct and separate clauses where the first clause operates as **Congressionally bestowed consent to a party** and the second clause operates as **a party's bestowed consent to a non-party**. The word **"consent" is found only in the second clause of 18USC2511(2)(d)**. The conclusion is that PA's § 5704 speaks to and operates on non-party intercepts only and that the Consolidated Statutes of Pennsylvania are silent with regard to a party's interception of a wire communication. Additionally, the language can only come from the second clause because of the plural of the word "party." Compare the underlined language of PA's § 5704 (above) to the underlined language of 18USC2511(2)(d) (below).

18USC2511(2)(d): (d) It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire, oral, or electronic communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State

It is absurd to believe that a party gives consent to oneself. To illustrate, consider that a given wire communication is established between two (2) persons – thus two parties. One party seeks and receives consent to intercept. It is absurd to believe that the intercepting party will give or has given itself consent. On the other hand it makes perfectly good sense that a non-party must obtain consent from one then the other – **that is all parties; the plural**.

Had the PA Legislature inserted the word "other" after the word "all" and before the word "parties" then it would be more clear that the section operated on the parties as well as non-parties. Had the PA Legislature used the words "every other party" in lieu of the words "all parties" then the language would be precise and would read: § 5704 It shall not be unlawful and no prior court approval shall be required under this chapter for: ... (4) A person, to intercept a wire, ... communication, where [every other party] to the communication ha[s] given prior consent to such interception.

To repeat, the following is the exact language of 18USC2511(2)(d). The Pennsylvania language is bolded.

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

As further proof, compare and contrast Maryland's relevant subsection to the federal 18USC2511(2)(d) and Pennsylvania's language. Pay particular attention to the fact that the Maryland Legislature merely replaced the disjunctive "or" with a conjunctive "and" and then substituted the word "all" for the word "one" in the second clause of the federal language. The Maryland subsection is set out below: **(Note that Maryland prohibits a non-party intercept.)**

§ 10-402. Interception of communications generally; divulging contents of communications; violations of subtitle.

...  
(c) Lawful acts.-

...  
(3) It is lawful under this subtitle for a person to intercept a wire, oral, or electronic communication where the person is a party to the communication **and** where **all** of the parties to the communication have given prior consent to the interception unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of this State. [Emphasis added.]

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Compare MD to the other “all-party consent” states: California, Connecticut, Florida, Illinois, Massachusetts, New Hampshire and Washington.

And, the Washington Legislature's scheme makes it apparent the a party does not give oneself consent because the Legislature enacted a separate subsection that bestows consent to a party for an intercept while at the same time providing a means of maintaining the privacy of the other party or parties.

§§9.73.030 ...

(3) Where consent by all parties is needed pursuant to this chapter [9.73], consent shall be considered obtained whenever **one party** has announced to all other parties engaged in the communication ..., in any reasonably effective manner, that such communication ... is about to be recorded .... [Emphasis added.]

To reiterate, this language provides additional proof that a party does not give oneself consent. Here the Legislature recognized the fact that a party may choose to intercept and provided for that by requiring prior disclosure through "any reasonably effective" announcement "to all other parties engaged in the communication." As a result, any other party that remained engaged in the communication gave an implied or informed consent.

Word Aids:

**Express consent.** Consent that is clearly and unmistakably stated.

**Implied consent.** Consent inferred from one's conduct rather than from one's direct expression.

**Informed consent.** 1. A person's agreement to allow something to happen, made with full knowledge of the risks involved and the alternatives.

Black's Law Dictionary, Abridged Seventh Edition, page 244.

**Federal Resources:** Review of State laws has revealed that §18USC2510 Definitions, which, in part, are set out below, have served as a source of language for those laws. Comparing a State law's language to the comparable federal definition may provide insight into intent of a State's law.

18USC2510 Definitions.

(1) "**wire communication**" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of interstate or foreign communications or communications affecting interstate or foreign commerce;

(4) "**intercept**" means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.

(5) "**electronic, mechanical, or other device**" means any device or apparatus which can be used to intercept a wire, oral, or electronic communication other than—

(a) any telephone or telegraph instrument, equipment or facility, or any component thereof,

(i) furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business; or

(ii) being used by a provider of wire or electronic communication service in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties;

(b) a hearing aid or similar device being used to correct subnormal hearing to not better than normal;

(6) "person" means any employee, or agent of the United States or any State or political subdivision thereof, and any individual, partnership, association, joint stock company, trust, or corporation;

(12) "**electronic communication**" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce, but does not include— (A) any wire or oral communication; (B) any communication made through a tone-only paging device; (C) any communication from a tracking device (as defined in section 3117 of this title); or (D) electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds; **[NOTE: Added by the Electronic Communications Privacy Act of 1986. This definition is being included because jurisdictions have adopted the term and portions of its language as a substitute for the term "wire communication" and there may be a desire or need to compare one to the other. For example, see Illinois, Indiana, and Montana.]**

(18) "**aural transfer**" means a transfer containing the human voice at any point between and including the point of origin and the point of reception;

18USC2511(2)(d) [lawful intercept] (d) It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire, oral, or electronic communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State.

**Federal Communications Commission:** Standing Order requiring service providers to submit a tariff enumerating prescriptions for recording wire communications. Excerpts of the record are set out below but not paragraphs 22 and 23. Note the synergy between 18USC2510 et seq. and 47USC605 as explained in paragraph 19 and 20.

#### IV. DISCUSSION

17. This proceeding, as previously noted, was established to reexamine the efficacy, desirability and lawfulness of our beep tone policy. In the *Further Notice* we had proposed to eliminate the tariff prescription and Commission Rule. Upon further consideration, however, we conclude that a Commission policy in support of privacy of communications is still desirable and is in fact lawful. The comments filed in this proceeding do not persuade us otherwise. As to the policy's efficacy, we shall not attempt to mask the simple fact that once the use of acoustic and inductive-type recorders became widespread, the only persons able to enforce this policy were those doing the recording. Under the current policy, unless the recording party voluntarily informs the other party, there is no feasible way to ensure that the other party is informed that recording is taking place. Typically, violations of the tariff only become evident when some use is made of the improperly obtained recording. Nevertheless, we do not believe that the limited effectiveness of the policy, in and of itself, justifies its elimination. We shall, however, modify the current tariff prescription and Section 64.501 of the Rules by adding to the present mutual consent or beep tone options a third option: recording will also be permitted if the recording party notifies the other party that it intends to record the conversation. This notification should be made at the beginning, and as part of, the recorded portion of any call.

18. Our reason for retaining our privacy policy, with this slight modification, is that, despite the telephone company's inability to detect unauthorized recordings when they are being made, the tariff sanctions can still be applied when such activity comes to light and, therefore, may still be useful as a deterrent. ACLU notes that in a number of instances AT&T has sent warning letters to violators who subsequently agreed to comply with the tariff and that, on occasion, subscribers have had their service suspended for repeated refusals to obey the tariff. In many instances, the mere threat of service suspension will be enough to deter future misconduct, especially if the violator is a business customer. For most people, as ACLU suggests, the very exigence of a regulation, albeit largely unenforceable, is enough to induce compliance. The usefulness of the tariff prescription, therefore, should not be measured by the number of violators actually punished.

19. We have also concluded that Congress did not intend to limit this Commission's jurisdiction in this area. In promulgating the Omnibus Act, the primary concerns of Congress were the interests of law enforcement, evidentiary clarity and corroborative accuracy of records as memory aids.<sup>21</sup> While we share Congress' concern for law enforcement, we also believe that the privacy of telephone communications is important and that appropriate measures should be taken to preserve users' privacy. Thus, we believe that the Omnibus Act and the tariff prescription protect different interests.

20. We also believe that the two enforcement mechanisms can operate harmoniously. As noted by United States Telephone Association (USTA), the reference to the Omnibus Act in Section 605 of the Communications Act suggests Congressional intent that the two statutes operate in harmony.<sup>22</sup> Moreover, the Omnibus Act does not limit the states' authority to impose stricter regulations within their own jurisdictions.<sup>23</sup> Congress appears to have fully intended to leave intact this Commission's privacy enforcement and penal jurisdiction under Titles IV and V of the Communications Act.

21. As noted, however, we are adding a one-party notification option to the present beep tone and mutual consent options. The purpose of Commission regulation in this area is to assure notification to the parties that their conversations are being recorded. Notification at the beginning of the call will meet that objective as well as beep tone or mutual consent.<sup>24</sup> Notification must be made in a clear, unambiguous manner at the beginning, and as part of, the recorded portion of any call. We further believe that one-party notification will be less intrusive and cumbersome in some situations than the mutual consent option and could, therefore, reduce any burdens which the present requirements might be causing.

## V. CONCLUSION

24. Although the beep tone and mutual consent requirements are difficult to enforce, we conclude that this fact alone does not justify their elimination. To discontinue a policy which has as its primary goal the protection of privacy in wire communications could erroneously signal the public that privacy in telephone conversations is no longer an important Commission goal. We, therefore, reject the tentative conclusion reached in the *Further Notice* that this Commission's Rule and tariff prescription imposing a beep tone or mutual consent requirement should be eliminated.

25. As discussed above, after carefully considering the comments submitted in response to our *Further Notice of Proposed Rulemaking*, Docket No. 20840, 95 FCC 2d 853 (1983), we have decided not to eliminate the tariff prescription and Commission rule regulating this area. We have further decided to add a one-party notification option to the present mutual consent and beep tone options.

26. As a result of this proceeding and pursuant to the authority granted in Sections 4(i), 4(j), 201, and 218 of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 201

and 218, Section 64.501 of our Rules, 47 C.F.R. § 64.501, dealing with the use of recording devices by telephone companies will be revised to comport with our findings. The revisions to Section 64.501 are set out in Appendix B and are to become effective March 12, 1987.

27. In view of the foregoing and pursuant to the authority granted in Sections 2(a), 4(i), 4(j), 201, 205, 303(r), and 403 of the Communications Act, 47 U.S.C. §§ 152(a), 154(i), 154(j), 201, 205, 303(r) and 403, IT IS ORDERED, that all common carriers subject to Title II of the Communications Act, 47 U.S.C. 151 *et seq.*, shall revise any tariff regulations on file with this Commission which provide for the use of recording devices in connection with interstate and foreign message toll telephone service and wide area telephone service, to comport with this Order.

28. IT IS FURTHER ORDERED, that the tariff revisions required in paragraph 27 be filed no later than 45 days from the release date of this Order to be effective on 15 days' notice. For this purpose we waive Section 61.58 of the Commission's Rules, 47 C.F.R. § 61.58 and assign Special Permission No. 87-2.

29. IT IS FURTHER ORDERED, that Docket No. 20840 is HEREBY TERMINATED.

### 47USC64.501Subpart E—Use of Recording Devices by Telephone Companies

#### § 64.501 Recording of telephone conversations with telephone companies.

No telephone common carrier, subject in whole or in part to the Communications Act of 1934, as amended, may use any recording device in connection with any interstate or foreign telephone conversation between any member of the public, on the one hand, and any officer, agent or other person acting for or employed by any such telephone common carrier, on the other hand, except under the following conditions:

- (a) Where such use shall be preceded by verbal or written consent of all parties to the telephone conversation, or
- (b) Where such use shall be preceded by verbal notification which is recorded at the beginning, and as part of the call, by the recording party, or
- (c) Where such use shall be accompanied by an automatic tone warning device, which will automatically produce a distinct signal that is repeated at regular intervals during the course of the telephone conversation when the recording device is in use. *Provided That:*

(1) The characteristics of the warning tone shall be the same as those specified in the Orders of this Commission adopted by it in "Use of Recording Devices in Connection With Telephone Service," Docket 6787, 11 FCC 1033 (1947); 12 FCC 1005 (November 26, 1947); 12 FCC 1008 (May 20, 1948).

(d) That the characteristics of the warning tone shall be the same as those specified in the Orders of this Commission adopted by it in "Use of Recording Devices in Connection With Telephone Service," Docket 6787; 11 F.C.C. 1033 (1947); 12 F.C.C. 1005 (November 26, 1947); 12 F.C.C. 1008 (May 20, 1948); (e) That no recording device shall be used unless it can be physically connected to and disconnected from the telephone line or switched on and off.

Analysis for a NOT Prohibited Non-Law Enforcement Intercept of a Wire, Private, Confidential, Telephonic, etc. Communication	It should be noted that no jurisdiction has legislatively defined the term "party."	Authority authorizing the intercept	Entity Authorized to Intercept	Law's Language - Notes: (1) Some language has been tailored to enhance understanding and for readability. (2) A bolded bracket set [ ] is used to indicate author inserted text. (3) For purposes of this work, use of the word "party" includes such terms as "sender" or "receiver." (4) % character in the Jurisdiction column: if the jurisdiction's name is suffixed with a % character, it means that the word "person" is a legislatively defined term.	*Word Aids: <b>Intent</b> is the mental resolution or determination to do an act. <b>Knowing</b> is having or showing awareness or understanding; well informed; deliberate; conscious. <b>Willful</b> means voluntary and intentional but not necessarily malicious. <b>Proviso</b> as used herein means a limitation or condition upon whose compliance the application of the law depends. <b>[Disjunctive or]</b> means that the following language is a second clause of the same section/subsection.	
Jurisdiction   Abbreviation	Citation or Silent	Authority authorizing the intercept	Entity Authorized to Intercept		Comment Section	
Page 1 of 30						
United States %	p	18USC2511(2)(d)	Authority authorizing the intercept Congress	Entity Authorized to Intercept any party	(d) It shall not be unlawful under this chapter [119] for a person not acting under color of law to intercept a wire, ... communication where such person is a party to the communication ... unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State.	'party' would mean the person actually participating in the communication, 1968 USCCAN 2112, 2183. "participant" is not defined.
	np	18USC2511(2)(d)	Authority authorizing the intercept A party	Entity Authorized to Intercept non-party	(d) [It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire, ... communication ... <b>[Disjunctive or]</b> where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State.	Congress's use of the <b>disjunctive "or"</b> and according to accepted grammar (A system of rules and principles for speaking and writing a language) of the English language means that the syntax of §§ 18USC2511(2)(d) present two separate and distinct clauses; each containing a separate and complete thought even though the two clauses work synergistically. <b>Most importantly, the second clause of §§ 18USC2511(2)(d), which is fabricated to the left, clearly conveys that a party is only authorized to give consent to a non-party and NOT to him/herself because it is already possessed by virtue of the first independently crafted clause. This is significant because a substantial number of state jurisdictions' laws replicate the language as set out to the left, which means that that jurisdiction's particular law operates only in a manner that permits a non-party who has received consent from a party to intercept the given wire communication.</b>
Alabama (Next page)	np	§13A-11-30 Definitions. §§(1)	Authority authorizing the intercept A party	Entity Authorized to Intercept non-party	(1) EAVESDROP. To ... record ... any part of the private communication <b>of others</b> without the consent of at least one of the persons engaged in the communication, except as otherwise provided by law. [Emphasis added.]  <b>[Caselaw: Michigan; See Sullivan v. Gray 324 NW 2d 58, 60 "the private discourse of others". [Emphasis added.]]</b>	The term "private communication" is not defined but it is assumed that it includes a wire communication. §13A-11-33 Installing eavesdropping device [substantiates non-party:] (a) A person <b>[non-party]</b> commits the crime of installing an eavesdropping device if he intentionally installs or places a device in a private place with knowledge it is to be used for eavesdropping and without permission of the <b>owner</b> and any lessee or tenant or guest for hire of the private place. [Emphasis added.] <b>[It is not reasonable for the legislature to mean an owner (party to private communication) would be required to get consent from the owner, hence, must mean non-party only.]</b>
	np					(b) Installing an eavesdropping device in a private place is prima facie evidence of knowledge that the device is to be used for eavesdropping.

<p>Alabama (Previous page)</p>	<p>AL</p>	<p>Silent</p>		<p>Entity Permitted to Intercept party</p>		<p><b>Caselaw:</b> MI; See Sullivan v. Gray 324 NW 2d 58, 60 Decided June 23, 1982. Released for Publication Sept. 22, 1982. "...a participant may record a conversation with apparent impunity...". [Note that this caselaw's date, June 23, 1982, is more than 27 years past. To date, the Michigan Legislature <b>has not</b> taken action to abrogate the effects of the opinion.]</p> <p><b>[Shepard's report:</b> Time of Request: Tuesday, September 21, 2010 17:38:04 Unrestricted Shepard's Summary: No negative case history. Citing References: Positive Analyses: Followed (2) Neutral Analyses: Explained (1) Other Sources: Law Reviews (9), Statutes (2), Treatises (5), Court Documents (2): CITING DECISIONS ( 20 citing decisions )]</p> <p>Because The Code of Alabama is silent re a party's conduct for an intercept of a wire communication; and absent good caselaw, one would assume that interception by a party is permitted. Alternatively, one could argue that 18USC2511(2)(d) and/or service provider tariffs apply.</p>
<p>Alaska (Next Page)</p>	<p>AK</p>	<p>§42.20.300 Unauthorized publication or use of communications. §§(b)</p>	<p>Authority authorizing the intercept  A party</p>	<p>Entity Authorized to Intercept  any person @</p>	<p>(b) Except as provided in AS 12.37 [Title 12, Chapter 37 generally concerns law enforcement wiretapping procedures.] a person not authorized by a party to the communication may not intentionally intercept a <b>private communication</b> ... [Emphasis added.]</p> <p><b>[@Note: Key Question applies.]</b></p> <p><b>[NOTE:</b> This style of statute writing, which may be somewhat unconventional when compared to other jurisdictions' style, does include the scenario where a party may authorize another party to intercept. As a result, Alaska Statutes are not being flagged as <b>Silent</b> on the matter of a party's intercept of a wire communication.]</p>	<p>§42.20.390 <b>Definitions.</b> In AS 42.20.300 - 42.20.390, §§42.20.390 (7) "intercept" means the aural or other acquisition of the contents of a [ ] ... wire ... communication through the use of any electronic, mechanical, or other device, including the acquisition of the contents by simultaneous transmission or by recording; (11) "<b>private communication</b>" means a [ ] ..., wire, ... communication uttered or transmitted by a person who has a reasonable expectation that the communication is not subject to interception; (12) "wire communication" means human speech used to communicate information from one party to another in whole or in part through the use of facilities for the transmission of communications by wire, cable, or other similar connection between the point of origin and the point of reception furnished or operated by a telephone, telegraph, or radio company for hire as a communications common carrier, but does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit.</p>
	<p>ap</p>	<p>§42.20.300 Unauthorized publication or use of communications. §§(b)</p>	<p>Authority authorizing the intercept  Legislature</p>	<p>Entity Authorized to Intercept  <b>[Proviso]</b> any person but most likely a party</p>	<p>(b) Except as provided in AS 12.37 [Title 12, Chapter 37 generally concerns law enforcement wiretapping procedures.] a person not authorized by a party to the communication may not intentionally intercept a <b>private communication</b> ... [Emphasis added.]</p>	<p><b>The proviso</b> is the condition when the communication <b>does not meet</b> the definition of a "private communication" pursuant to §§42.20.390 (11).</p> <p><b>Examples:</b> A party announces at the beginning of the wire communication that the wire communication is being recorded. A party hears a beep tone, which is consistent with the service provider's tariff.</p>

Alaska (Previous Page)	AK	ap	§42.20.310. Eavesdropping. §§(a)(1) and [See <b>Comment Section</b> for §§(b).]	Authority authorizing the intercept  A party	Entity Authorized to Intercept  any person @	(a) A person may not (1) use an eavesdropping device to ... record all or any part of an oral conversation without the consent of <b>a party</b> to the conversation; ... [Emphasis added.]  [See Comment Section to verify "eavesdropping devise" AND "oral conversation" may be an intercept of a telephone communication.]	[ @ <b>Key Question applies.</b> ]  §§42.20.310(b) In this section "eavesdropping device" means any device capable of being used to hear or record oral conversation whether the conversation is conducted in person, by telephone, ...
		nc	§42.20.320. Exemptions. §§(a)(5) and (9) Note: see (5) in Comment Section §§(b)	Authority authorizing the intercept  Legislature	Entity Authorized to Intercept (5) any person (9) parent who could also be a party (b) any person who could also be a party	(a) The following activities are exempt from the provisions of AS 42.20.300 and 42.20.310: (5) inadvertent interception of telephone conversations over party lines; (9) interception of a private communication to which a minor is a party by a parent of the minor, except that interception of a private communication between a minor ... [See <b>Alaska Statutes for exceptions and evidentiary clauses.</b> ] (b) Notwithstanding any other provision of law, a person who inadvertently intercepts a private communication that appears to pertain to the commission of a crime may report the information to a law enforcement agency.	§42.20.390 Definitions. In AS 42.20.300 - 42.20.390, §§42.20.390 (8) "minor" means a child under 18 years of age who has not had the disabilities of a minor removed as described in AS 09.55.590 ;
Arizona% (Next Page)	AZ	np	§13-3005. Interception of wire,...communications;...exceptions §A.1.	Authority authorizing the intercept  A party	Entity Authorized to Intercept  non-party	A. Except as provided in this section and section 13-3012 [Exemptions.] , a person is guilty ... who ...: 1. Intentionally intercepts a wire... communication to which <b>he is not a party</b> , ... , without the consent of <b>either a sender or receiver thereof</b> . [Emphasis added.]	
		sr	§13-3012. Exemptions. §2.	Authority authorizing the intercept  Legislature	Entity Authorized to Intercept  [Proviso] generally, (1) every party consents for a non-party @ intercept (2) recorder notifies (3) beep tone	The following are exempt from the provisions of this chapter [30]: ... 2. The normal use of services, equipment and facilities that are provided by a communication service provider <b>pursuant to tariffs</b> that are on file with the Arizona corporation commission or the federal communications commission ... [Emphasis added.]	[ @ <b>Key Question applies.</b> ]  It should be noted that the FCC does not have a regulation governing the recording of intrastate wire communications. However there is a standing order that each regulated provider of wire communications submit a tariff that is consistent with 47CFR64.501. See FCC Reports Vol. 2, No. 2, 502-506 at 505 ¶127 and ¶128. Because the Legislature knowingly and willfully incorporated service provider <b>tariff</b> requirements into this section, the <b>tariffs</b> operate as the law of this jurisdiction. It is the same as though the Legislature has transcribed said <b>tariffs</b> into the section's language itself.  See tab or .pdf named <b>Federal Resources</b> then under <b>Federal Resources</b> (continued) at Federal Communications Commission.
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Arizona% (Previous Page)	AZ	ap	§13-3012. Exemptions. §§9.	Authority authorizing the intercept A party	Entity Authorized to Intercept any person	The following are exempt from the provisions of this chapter [30]:  9. The interception of any wire, ... communication by any person, if the interception is effected with the consent of a party to the communication ...	
		np	§13-3012. Exemptions. §§9.	Authority authorizing the intercept Any Person	Entity Authorized to Intercept non-party	The following are exempt from the provisions of this chapter [30]:  9. The interception of any wire,... communication by any person, if the interception is effected with the consent of ... <b>[Disjunctive [or]]</b> a person who is present during the communication,	It is most likely that caselaw would be required to clarify whether or not the word "communication" after the disjunctive or means "oral communication" but the language on its own does not and as a result "communication" would include a wire communication.
Arkansas%	AR	p	§5-60-120. Interception and recording. §§(a)	Authority authorizing the intercept Legislature	Entity Authorized to Intercept party	(a) It is unlawful for a person to intercept a wire, landline, ..., telephonic communication, or wireless communication, and to record ... the communication unless the person is a party to the communication ....	This language stands out from any other jurisdiction because of the <b>conjunctive "and"</b> between the elements " <b>to intercept</b> " and " <b>to record.</b> "  This subsection, in general, has been adopted from the federal scheme, 18USC2511(2)(d).
		f np	§5-60-120. Interception and recording. §§(a)	Authority authorizing the intercept A party	Entity Authorized to Intercept non-party	(a) It is unlawful for a person to intercept a wire, landline, ..., telephonic communication, or wireless communication, and to record ... the communication unless ... <b>[Disjunctive [or]]</b> one (1) of the parties to the communication has given prior consent to the interception and recording.	This language stands out from any other jurisdiction because of the <b>conjunctive "and"</b> between the elements " <b>to intercept</b> " and " <b>to record.</b> "  This subsection, in general, has been adopted from the federal scheme, 18USC2511(2)(d).
California% (Next Page)	CA	t	§§631(b) NOTE: §§ (a) has been included in part within the Comment Section to provide "background."	Authority authorizing the intercept Legislature	Entity Authorized to Intercept  <b>[Proviso]</b> See applicable document(s) in the Comment Section.  party or non-party as appropriate.	§§631(b) This section shall not apply ... (2) to the use of any instrument, equipment, facility, or service furnished and used <b>pursuant to the tariffs</b> of a public utility, ... <b>[Emphasis added.]</b>	§§631(a) Any person who, by means of any machine, instrument, or contrivance, or in any other manner, intentionally taps, or makes any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any ... telephone wire, line, cable, or instrument, including the wire, line, cable, or instrument of any internal telephonic communication system, ... is punishable by ...  See tab or .pdf named <b>Federal Resources</b> then under <b>Federal Resources</b> (continued) at Federal Communications Commission.  GENERAL ORDER 107-B (Supersedes General Order 107-A) PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA RULES AND REGULATIONS CONCERNING THE PRIVACY OF TELEPHONE COMMUNICATIONS. Adopted July 1, 1983; Effective July 1, 1983. Decision 83-06-21, 011 103. Amended October 19,1983; Effective October 19, 1983. Decision 83-10-090, O11 103.  See also the first California Comment Section below.

California % (Previous Page)	CA	ap	<p>§§631(b) [NOTE: §§ (a) has been included in part within the Comment Section to provide "background."]</p>	<p>Authority authorizing the intercept</p> <p>Legislature</p>	<p>Entity Authorized to Intercept</p> <p>anyone</p>	<p>§§631(b) This section shall not apply ... (3) to any telephonic communication system used for communication exclusively within a state, county, city and county, or city correctional facility.</p>	<p>§§631(a) Any person who, by means of any machine, instrument, or contrivance, or in any other manner, intentionally taps, or makes any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any ... telephone wire, line, cable, or instrument, including the wire, line, cable, or instrument of any internal telephonic communication system, ... is punishable by ...</p>
		np	<p>§§632(a) [NOTE: §§ (b) <sup>l#</sup> has been included as a means to explain why the term "an individual" is used.]</p>	<p>Authority authorizing the intercept</p> <p>Parties (all must consent)</p>	<p>Entity Authorized to Intercept</p> <p>non-party</p>	<p>(a) Every person who, ... without the consent of <b>all parties</b> to a <b>confidential communication</b>, by means of any ... recording device, ... records the confidential communication, whe[n] the communication is carried on ... by means of a ... telephone, or other device, except a radio, shall be punished ... [Emphasis added.]</p> <p># (b) The term "person" ... excludes an individual known by all parties ... to be overhearing or recording the communication.</p>	<p>It should be noted that this law is couched within the State's Constitution Article 1 Declaration of Rights §1 "All people are by nature free and independent and have inalienable rights. Among these [is] ... pursuing and obtaining ... privacy" and the Legislature's Penal Code §630 ... "The Legislature by this chapter intends to protect the right of privacy of the people of this state...." However, within the context of recording any given wire communication, as evidenced below, the responsibility to keep conversation private rests solely on the party or parties to the communication.</p>
		nc	<p>§§632(c)</p>	<p>Authority authorizing the intercept</p> <p>Legislature</p>	<p>Entity Authorized to Intercept <b>(Proviso)</b></p> <p>an individual</p>	<p>(c) The term "<b>confidential communication</b>" includes any communication carried on <b>in circumstances</b> as may reasonably indicate that any party to the communication desires it to be confined to the parties thereto, <b>but excludes</b> a communication ... in <b>any ... circumstance in which the parties to the communication may reasonably expect that the communication may be overheard or recorded.</b> [Emphasis added.] <b>[Proviso = disclosed intercept.]</b></p>	<p>Notwithstanding the all party consent requirement, the Legislature has included language that one could say "changes the perspective or mindset" for conduct associated with intercepting a wire communication. By a party merely announcing intent to record, by definition, the communication is no longer a "confidential communication." As with all such type laws, one <b>must</b> be aware that "right to privacy" is at best fragile. Any party is permitted to repeat the content of any confidential communication. And, this legislature, like most, does not include a definition for the term "party."</p>
		t2	<p>§§632(e)</p>	<p>Authority authorizing the intercept</p> <p>Legislature</p>	<p>Entity Authorized to Intercept</p> <p><b>[Proviso]</b> See applicable document(s) in the Comment Section.</p> <p>party or non-party as appropriate.</p>	<p>(e) This section does not apply ... (2) to the use of any instrument, equipment, facility, or service furnished and used <b>pursuant to the tariffs</b> of a public utility, or .... [Emphasis added.]</p> <p>[It should be noted that the above language was, in general, extracted from §§18USC2510(5)(a) - see the tab or .pdf named <b>Federal Resources</b>. What is significant is that the federal law is restrictive to "in the ordinary course of ... business..." whereas, the California Legislature chose to make the language operable without restriction, i.e., to include any user regardless of classification - private, business, government, etc. See Federal Resources (continued) at Federal Communications Commission.]</p>	<p>It is most likely that caselaw would have to resolve any issues brought to light under this subsection. The Federal Communications Commission has a fairly robust history in this matter and every provider that is under its jurisdiction is required to permit interception of any given intrastate wire communication. Each provider's subject matter tariff must enumerate the following: all-party consent, a tone warning system and a verbal notification. Tariff requirement is <b>all-party consent</b>. Because the Legislature knowingly and willfully incorporated provider tariff requirements into this section, the tariffs operate as the law of this jurisdiction. It is the same as though the Legislature has transcribed said tariffs into the section's language itself. By making reference to the tariffs, the Legislature provides for modification while not having to revisit the body of law so as to incorporate those modifications. In effect inclusion of said tariffs make them applicable to any given intrastate wire communication.</p> <p>See also the first California Comment Section above.</p>

Colorado	CO	sr np	§18-9-303 Wiretapping prohibited - penalty. §§(1)(a)	Authority authorizing the intercept  A party	Entity Authorized to Intercept  non-party	(1) Any person <b>not a sender or intended receiver</b> of a telephone ... communication commits wiretapping if he: (a) Knowingly ... records a telephone, ... communication without the consent of either a sender or a receiver thereof or attempts to do so; ... [Emphasis added.]	
		t	§18-9-305. Exceptions. §§(2)	Authority authorizing the intercept  Legislature	Entity Authorized to Intercept  [Proviso] generally, (1) every party consents for a non-party intercept @ (2) recorder notifies (3) beep tone	(2) No part of sections 18-9-302 to 18-9-304 shall apply to the normal use of services, facilities, and equipment provided by a provider of wire ... communication service <b>pursuant to its tariffs</b> on file with the public utilities commission of the state of Colorado and with the federal communications commission; ... [Emphasis added.]  [It should be noted that the above language was, in general, extracted from §§18USC2510(5)(a) - see the tab or .pdf named <b>Federal Resources</b> . What is significant is that the federal law is restrictive to "in the ordinary course of ... business..." whereas, the California Legislature chose to make the language operable without restriction, i.e., to include any use regardless of classification - private, business, government, etc.	[ @ Key Question applies.]  It should be noted that the FCC does not have a regulation governing the recording of intrastate wire communications. However there is a standing order that each regulated provider of wire communications submit a tariff that is consistent with 47CFR64.501. See FCC Reports Vol. 2, No. 2, 502-506 at 505 ¶¶27 and ¶28. Because the Legislature knowingly and willfully incorporated service provider <b>tariff</b> requirements into this section, the <b>tariffs</b> operate as the law of this jurisdiction. It is the same as though the Legislature has transcribed said <b>tariffs</b> into the section's language itself.  See tab or .pdf named <b>Federal Resources</b> then under <b>Federal Resources</b> (continued) at Federal Communications Commission.
Connecticut % (Next Page)	CT	t2	§52-570d Action for illegal recording of private telephonic communications. §§(a)(1)(2)(3)	Authority authorizing the intercept  (1) Every party (2) Any person (3) (Any person	Entity Authorized to Intercept [Proviso] generally, (1) every party consents for a non-party intercept (2) recorder notifies (3) beep tone	(a) No person shall use any instrument, device or equipment to record an oral private telephonic communication unless the use of such instrument, device or equipment (1) is preceded by consent of all parties to the communication and such prior consent either is obtained in writing or is part of, and obtained at the start of, the recording, or (2) is preceded by verbal notification which is recorded at the beginning and is part of the communication by the recording party, or (3) is accompanied by an automatic tone warning device which automatically produces a distinct signal that is repeated at intervals of approximately fifteen seconds during the communication while such instrument, device or equipment is in use.	The language for this subsection was most likely sourced form 47CFR64.501, which is a regulation issued by the Federal Communications Commission.  It should be noted that the FCC described the requirement in ¶(2) as "one-party notification option." See tab or .pdf named <b>Federal Resources</b> then under <b>Federal Resources</b> (continued) Federal Communications Commission at ¶21. However, the effect is all-party consent where the recorder is under "informed" and the recorded is under "implied."  This section is referred within the annotations below Sec. 53a-189. Eavesdropping: ...
		p	§52-570d Action for illegal recording of private telephonic communications. §§(b)(3)(4)	Authority authorizing the intercept  Legislature	Entity Authorized to Intercept  party	(b) The provisions of subsection (a) of this section shall not apply to: ... (3) Any person who, as the recipient of a telephonic communication which conveys threats of extortion, bodily harm or other unlawful requests or demands, records such telephonic communication; (4) Any person who, as the recipient of a telephonic communication which occurs repeatedly or at an extremely inconvenient hour, records such telephonic communication;	Note: the several other exclusions are law enforcement or emergency situation or common carrier related , which are not this document's focus.

Connecticut % (Previous Page)	CA	np	§53a-187. Definitions. Applicability. (a)... §§(1) [First sentence only]	Authority authorizing the intercept Legislature	Entity Authorized to Intercept non-party	(1) "Wiretapping" means the intentional overhearing or recording of a telephonic ... communication or a communication made by cellular radio telephone <b>by a person other than a sender or receiver thereof</b> , without the consent of either the <b>sender or receiver</b> , by means of any instrument, device or equipment. [Emphasis added.]	This subsection was enacted in 1969 most likely in response to the passage of the federal Omnibus Crime Control and Safe Streets Act of 1968, Title III. Connecticut's §52-570d Action for illegal recording of private telephonic communications was enacted in 1990. It is not clear as to the reason why §52-570d was enacted because the second sentence of this subsection is in essence §52-570d except for three of the eight non applicable paragraphs in §§(b) and the civil penalties in §§(c).
		t	§53a-187. Definitions. Applicability. §§(a)... (1) [Second sentence only]	Authority authorizing the intercept Legislature	Entity Authorized to Intercept <b>[Proviso]</b> generally, (1) every party consents for a non-party intercept (2) recorder notifies (3) beep tone	(1) "Wiretapping" ... The normal operation of a telephone ... corporation and <b>the normal use of the services and facilities furnished by such corporation pursuant to its tariffs</b> shall not be deemed "wiretapping". [Emphasis added.]	Said tariffs are most likely on file with the Connecticut Department of Public Utility Control. Similar information should available for viewing and reading in the white pages of phone directories.  See tab or .pdf named <b>Federal Resources</b> then under <b>Federal Resources</b> (continued) Federal Communications Commission at ¶24 through ¶29.  This language is the same as New York §§250.00 1. "Wiretapping."
Delaware %	DE	np	§ 1335. Violation of privacy §§(a)(4)	Authority authorizing the intercept Every party	Entity Authorized to Intercept non-party	(a) A person is guilty of violation of privacy when, <b>except as authorized by law</b> [See Comment Section.], the person: ... (4) Intercepts <b>without the consent of all parties thereto</b> a message by telephone, ...or other means of communicating privately, ... [Emphasis added.]	This subsection, which was enacted in 1953, is in conflict with §§2402(c)(4), which was enacted in 1999 when the Delaware Legislature, in general, adopted the federal scheme, 18USC2510 et seq. See 54 NY School of Law Law Review 147, 150 note 14.  Neither term, "privacy" or "privately" is defined.
		f	§ 2402. Interception of communications generally; §§ (c)(4)	Authority authorizing the intercept Legislature	Entity Authorized to Intercept party	(c) Lawful acts. -- It is lawful: ... (4) For a person to intercept a wire,...communication where the person is a party to the communication ..., unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitutions or laws of the United States, this State or any other state or any political subdivision of the United States or this or any other state.	This subsection, which was enacted in 1999 when the Delaware Legislature, in general, adopted the federal scheme, 18USC2510 et seq., is in conflict with §§(1335(a)(4), which was enacted in 1953. See 54 NY School of Law Law Review 147, 150 note 14.  It should be noted that this law <b>"surrenders"</b> to any other jurisdiction's law when there is a conflict of law and choice of law case.
		np	§ 2402. Interception of communications generally; §§ (c)(4)	Authority authorizing the intercept A party	Entity Authorized to Intercept non-party	(c) Lawful acts. -- It is lawful: ... (4) For a person to intercept a wire,...communication... <b>[Disjunctive [or]]</b> where one of the parties to the communication has given prior consent to the interception, unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitutions or laws of the United States, this State or any other state or any political subdivision of the United States or this or any other state.	This subsection, which was enacted in 1999 when the Delaware Legislature, in general, adopted the federal scheme, 18USC2510 et seq., is in conflict with §§(1335(a)(4), which was enacted in 1953. See 54 NY School of Law Law Review 147, 150 note 14.  It should be noted that this law <b>"surrenders"</b> to any other jurisdiction's law when there is a conflict of law and choice of law case.

District of Columbia	DC	f	§ 23-542. Interception, disclosure, and use of wire or oral communications prohibited. §§(b)(3)	Authority authorizing the intercept Legislature	Entity Authorized to Intercept party	(b) It shall not be unlawful under this section for -- (3) a person not acting under color of law to intercept a wire ...communication, ..., unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States, any State, or the District of Columbia, or for the purpose of committing any other injurious act.	The Legislature, in general, adopted the federal 1968 scheme, 18USC2511(2)(d). The federal subsection was amended to strike that part "any other injurious act" but see § 23-556. Relation to Federal law on wire interception and interception of oral communications.  It should be noted that this law " <b>surrenders</b> " to any other jurisdiction's law when there is a conflict of law and choice of law case.
		p	§ 23-542. Interception, disclosure, and use of wire or oral communications prohibited. §§(b)(3)	Authority authorizing the intercept A party	Entity Authorized to Intercept non-party	(b) It shall not be unlawful under this section for -- (3) a person not acting under color of law to intercept a wire ... communication, [ <b>Disjunctive [or]</b> ] where one of the parties to the communication has given prior consent to such interception, unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States, any State, or the District of Columbia, or for the purpose of committing any other injurious act.	The Legislature, in general, adopted the federal 1968 scheme, 18USC2511(2)(d). The federal subsection was amended to strike that part "any other injurious act" but see § 23-556. Relation to Federal law on wire interception and interception of oral communications.  It should be noted that this law " <b>surrenders</b> " to any other jurisdiction's law when there is a conflict of law and choice of law case.
Florida%	FL	np	§934.01 Legislative findings.			On the basis of its own investigations and of published studies, the Legislature makes the following findings: (1) Wire communications are normally conducted through the use of <b>facilities which form part of an intrastate network. The same facilities are used for interstate and intrastate communications.</b> (2) In order to protect effectively the privacy of wire ... communications, ..., it is necessary for the Legislature to define the circumstances and conditions under which the interception of wire ... communications may be authorized ....	FLORIDA. CONSTITUTION. Article. I, § 12. Searches and Seizures: The right of the people to be secure in their persons, houses, papers and effects ... Against the <b>unreasonable</b> interception of private communications by any means, shall not be violated.
		np	§934.03 Interception ... of wire, ... communications prohibited.-- §§2.(d)	Authority authorizing the intercept Every party	Entity Authorized to Intercept non-party	2.(d) It is <b>lawful</b> under ss. 934.03-934.09 for a person to intercept a wire, ... communication <b>when all of the parties</b> to the communication have given prior consent to such interception. [Emphasis added.]	This subsection, in part, has been adopted from the federal scheme, 18USC2511(2)(d). See the Rules for Analysis tab under <b>Federal Resources</b> . See also - select the <b>Rules for Analysis</b> tab or .pdf then read the associated text under the subtitle: <b>Background and Rationale re Key Question:</b> for an explanation of why this subsection's language permits an intercept by a non-party only.
		s	<b>Silent</b>		Entity Permitted to Intercept party		Because the Florida Statutes are silent re a party's conduct for an intercept of a wire communication; and absent "good" caselaw, one would assume that interception by a party is permitted. Alternatively, one could argue that the first clause of 18USC2511(2)(d) and/or service provider tariffs apply.

Georgia	GA	ap	§ 16-11-62. ... intercepting communication which invades privacy of another; ... §§(4)	Authority authorizing the intercept  Legislature	Entity Authorized to Intercept  any person [Proviso-See Comment Sec.]	§16-11-62. ...intercepting communication...It shall be unlawful for: (4) Any person intentionally and [proviso] secretly to intercept by the use of any device, instrument, or apparatus the contents of a message sent by telephone,... of [a] private communication;	§ 16-11-60. Definitions ... (3) "Private place" means a place where one is entitled reasonably to expect to be safe from casual or hostile intrusion or surveillance.  [Proviso] §§16-11-62(4) permits any disclosed intercept.
		f	§16-11-66. Interception of wire, ...communication by party...; §§(a)	Authority authorizing the intercept  Legislature	Entity Authorized to Intercept  party	(a) Nothing in Code Section 16-11-62 shall prohibit a person from intercepting a wire, ... communication where such person is a party to the communication ....	In general, §§16-11-66(a) was sourced from 18USC2511(2)(d).
		p	§16-11-66. Interception of wire, ...communication by party...; §§(a)	Authority authorizing the intercept  A party	Entity Authorized to Intercept  non-party	(a) Nothing in Code Section 16-11-62 shall prohibit a person from intercepting a wire,... communication where ... [Disjunctive [or]] one of the parties to the communication has given prior consent to such interception.	In general, §§16-11-66(a) was sourced from 18USC2511(2)(d).
		np	§ 16-11-66. ....; consent requirements for recording and divulging conversations to which child under 18 years is a party; parental exception §§(d)	Authority authorizing the intercept  Legislature	Entity Authorized to Intercept  parent or guardian	(d) The provisions of this article [ARTICLE 3. INVASIONS OF PRIVACY] shall not be construed to prohibit a parent or guardian of a child under 18 years of age, with or without the consent of such minor child, from ... intercepting telephonic conversations of such minor child ... by use of an extension phone located within the family home, ..., for the purpose of ensuring the welfare of such minor child. ....	
Hawaii% (Next Page)	HI	f	§803-42 Interception...of wire, ...communications , ... prohibited §§(b)(3)(A)	Authority authorizing the intercept  Legislature	Entity Authorized to Intercept  party	(b)(3)(A) It shall not be unlawful under this part [Volume 14: PART IV. ELECTRONIC EAVESDROPPING] for a person not acting under color of law to intercept a wire, ... communication when the person is a party to the communication ... unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of this State.	This subsection, in general, has been adopted from the federal scheme, 18USC2511(2)(d).
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Hawaii% (Previous Page)	HI	§803-42 Interception...of wire, ...communications , ... prohibited §§(b)(3)(A)	Authority authorizing the intercept  A party	Entity Authorized to Intercept  non-party	(b)(3)(A) [It shall not be unlawful under this part for a person not acting under color of law to intercept a wire, ... communication ... <b>[Disjunctive [or]]</b> or when one of the parties to the communication has given prior consent to the interception unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of this State.	This subsection, in general, has been adopted from the federal scheme, 18USC2511(2)(d).
Idaho%	ID	§18-6702 Interception...of wire, ...communications, ... prohibited §§(2)(d)	Authority authorizing the intercept  A party	Entity Authorized to Intercept  any person @	(d)(2) It is lawful under this chapter [Title 18. Chapter 67 COMMUNICATIONS SECURITY] for a person to intercept a wire, ... communication when one (1) of the parties has given prior consent to such interception.	<b>[ @ Key Question applies.]</b>  This subsection, in <b>part</b> , has been adopted from the federal scheme, 18USC2511(2)(d). See the second clause.  Under this language, a party is not permitted to intercept unless consent is obtained from another party.
Illinois (Next Page)	IL	Constitution of the State of Illinois  §14 2. <b>Elements</b> of the offense; affirmative defense. §§(a)(1)(A)	Authority authorizing the intercept  Legislature	Entity Authorized to Intercept  any person (but most likely a party) <b>[any one of 2 Proviso - See Comment Section.]</b>	(a) A person commits eavesdropping when he: (1) Knowingly and intentionally <b>uses an eavesdropping device for the purpose of</b> hearing or recording all or any part of any conversation or <b>intercept[ing]</b> , retains, or transcribes <b>[an] electronic communication unless he does so (A) with the consent of all of the parties to such conversation or electronic communication</b> or ... [Emphasis added.]	SECTION 6. SEARCHES, SEIZURES, PRIVACY AND INTERCEPTIONS The people shall have the right to be secure in their persons, houses, papers and other possessions against <b>unreasonable</b> ..., invasions of privacy or <b>interceptions of communications by eavesdropping devices or other means.</b> .... [Emphasis added.]  ARTICLE 14. EAVESDROPPING; 14 1. Definition. ... (e) Electronic communication. For purposes of this Article, <b>the term electronic communication means any transfer of</b> signs, signals, writing, images, <b>sounds</b> , data, <b>or intelligence of any nature transmitted in whole or part by a wire,</b> ... computer, electromagnetic, ..., <b>where the sending and receiving parties intend the electronic communication to be private and the interception, recording, or transcription of the electronic communication is accomplished</b> by a device in a surreptitious manner contrary to the provisions of this Article.  §§14 2.(a)(1)(A) permits any interception provided (1) any of the parties DOES NOT intend (See <u>Word Aids</u> at the top of this column.) the communication to be private or (2) the interception IS NOT done in a surreptitious manner.

Illinois (Previous Page)	IL	np	§14 2. Elements of the offense; affirmative defense §§(a)(1)(A)	Authority authorizing the intercept  Every party	Entity Authorized to Intercept  non-party	(a) A person commits eavesdropping when he: (1) Knowingly and intentionally uses an eavesdropping device for the purpose of ... intercept[ing], ...[an] electronic communication unless he does so (A) <b>with the consent of all of the parties to such ...</b> electronic communication ... [Emphasis added.]	See also the <b>Rules for Analysis</b> tab or .pdf then read the associated text under the subtitle: <b>Background and Rationale re Key Question:</b> for an explanation of why this subsection's language permits an intercept by a non-party only.  When the §§ 14.1(e) and 14.2(a)(1)(A) of the statute are read together, the language results in an oxymoron. By definition, if the parties had given consent, it is impossible for a person to intercept an " <b>electronic communication</b> " because there is no "electronic communication" to intercept.  Similarly, any party with intent to be a party to a non-private communication could with impunity intercept that communication. And, the legislature neglected to require that the intent be disclosed <b>before</b> the intercept.
		nc	§14 3. Exemptions.	Authority authorizing the intercept  Legislature	Various	[The exemptions of this section were ignored for analysis because of their complexity or because they pertain to law enforcement related scenarios.]	
Indiana	IN	sr	§35-33.5-1-5 "Interception" defined	Authority authorizing the intercept  Party	Entity Authorized to Intercept  non-party	Sec. 5. "Interception" means the intentional recording or acquisition of the contents of an electronic communication by a person <b>other than a sender or receiver of that communication</b> , without the consent of the sender or receiver, by means of any instrument, device, or equipment under this article. This term includes the intentional recording or acquisition of communication through the use of a computer ... [Emphasis added.]	IC 35-33.5-1-3.5 "Electronic communication" defined Sec. 3.5. "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, oral communication, digital information, or intelligence of any nature transmitted in whole or in part by a wire, a radio, or an electromagnetic, a photoelectric, or a photo-optical system.
		np	Silent		Entity Permitted to Intercept  party		Because the Indiana Code is silent re a party's conduct for an intercept of a wire communication; and absent "good" caselaw, one would assume that interception by a party is permitted. Alternatively, one could argue that the first clause of 18USC2511(2)(d) and/or service provider tariffs apply.

Iowa	IA	p	§727.8 Electronic and mechanical eavesdropping.	Authority authorizing the intercept Legislature	Entity Authorized to Intercept party	Any person, ..., who by any electronic or mechanical means ..., records, or otherwise intercepts a ... communication of any kind, commits a serious misdemeanor; <b>provided, that the sender or recipient of ... a communication</b> shall not be prohibited hereby from recording such ... communication; ... [Emphasis added.]	[Full text of] 727.8 Electronic and mechanical eavesdropping. Any person, having no right or authority to do so, who taps into or connects a listening or recording device to <b>any telephone or other communication wire</b> , or who by any electronic or mechanical means listens to, records, or otherwise intercepts a conversation or communication of any kind, commits a serious misdemeanor; provided, that the sender or recipient of a message or one who is openly present and participating in or listening to a communication shall not be prohibited hereby from recording such message or communication; and further provided, that nothing herein shall restrict the use of any radio or television receiver to receive any communication transmitted by radio or wireless signal. [C97, §4816; C24, 27, 31, 35, 39, §13121; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §716.8; C79, 81, §727.8]
		np	§727.8 Electronic and mechanical eavesdropping.	Authority authorizing the intercept Legislature	Entity Authorized to Intercept non-party	Any person, ..., who by any electronic or mechanical means ..., records, or otherwise intercepts a ... communication of any kind, commits a serious misdemeanor; <b>provided, that ... one who is openly present and ... listening to a communication</b> shall not be prohibited hereby from recording such ... communication; ... [Emphasis added.]	
		p2	§808B.2 Unlawful acts - penalty. §2.c	Authority authorizing the intercept Legislature	Entity Authorized to Intercept party	2. c. It is not unlawful under this chapter for a person not acting under color of law to intercept a wire, ... communication if the person is a party to the communication ..., unless the communication is intercepted for the purpose of committing a criminal or tortious act in violation of the Constitution or laws of the United States or of any state or for the purpose of committing any other injurious act.	In general, §§808B.2 2.c was sourced from 18USC2511(2)(d).  It should be noted that this law " <b>may surrender</b> " to any other jurisdiction's law when there is a conflict of law and choice of law case.
		f np2	§808B.2 Unlawful acts - penalty. §2.c	Authority authorizing the intercept Party	Entity Authorized to Intercept non-party	2. c. It is not unlawful under this chapter for a person not acting under color of law to intercept a wire, ... communication ... <b>[Disjunctive [or]]</b> or if one of the parties to the communication has given prior consent to the interception, unless the communication is intercepted for the purpose of committing a criminal or tortious act in violation of the Constitution or laws of the United States or of any state or for the purpose of committing any other injurious act.	In general, §§808B.2 2.c was sourced from 18USC2511(2)(d).  It should be noted that this law "may surrender" to any other jurisdiction's law when there is a conflict of law and choice of law case.

Kansas%	KS	ap	§21-4001. Eavesdropping. §§(a)(3)	Authority authorizing the intercept Person	Entity Authorized to Intercept any person @	(a) Eavesdropping is knowingly and without lawful authority: (3) installing or using any device or equipment for the interception of any ... wire communication without the consent of the person in possession or control of the facilities for such wire communication; or	[@ Key Question applies.]
		sr ap	§21-4002 Breach of privacy §§(a)(1)	Authority authorizing the intercept Party	Entity Authorized to Intercept any person @	(a) Breach of privacy is knowingly and without lawful authority: (1) Intercepting, without the consent of the sender or receiver, a message by telephone, telegraph, letter or other means of private communication; or	[@ Key Question applies.]
Kentucky	KY	np	§ 526.010 Definition.	Authority authorizing the intercept A party	Entity Authorized to Intercept non-party	The following definition applies in this chapter, unless the context otherwise requires: "Eavesdrop" means to ..., record, ... any part of a wire ... communication <b>of others</b> without the consent of at least one (1) party thereto by means of any electronic, mechanical or other device. [Emphasis added.]	<b>Caselaw:</b> Court of Appeals of Michigan; See Sullivan v. Gray 324 NW 2d 58, 60 "...a participant may record a conversation with apparent impunity...". [See Michigan's Comment Section for Shepard Report.]
		s	Silent		Entity Permitted to Intercept party		<b>Caselaw:</b> Court of Appeals of Michigan; See Sullivan v. Gray 324 NW 2d 58, 60 "...a participant may record a conversation with apparent impunity...". [See Michigan's Comment Section for Shepard Report.]  Because the Kentucky Revised Statutes are silent re a party's conduct for an intercept of a wire communication; and absent good caselaw, one would assume that interception by a party is permitted. Alternatively, one could argue that 18USC2511(2)(d) and/or service provider tariffs apply.
Louisiana% (Next page)	LA	p	§1303. Interception ...of wire, ... Communications §C.(4)	Authority authorizing the intercept Legislature	Entity Authorized to Intercept party	C.(4) It shall not be unlawful under this Chapter for a person not acting under color of law to intercept a wire ...communication where such person is a party to the communication ..., unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the United States or of the state or for the purpose of committing any other injurious act.	It appears that Louisiana Revised Statutes for Title 15 Criminal Procedure does not use "Chapters." It is most likely that the language of §§1303C.(4) is the verbatim language of the original 18USC2511(2)(d).

<p>Louisiana% (Previous page)</p>	<p>LA</p>	<p>§1303. Interception ...of wire, ... Communications §§C.(4)</p>	<p>Authority authorizing the intercept  A party</p>	<p>Entity Authorized to Intercept  non-party</p>	<p>C.(4) [It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire, ... communication ... <b>[Disjunctive [or]]</b> where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the United States or of the state or for the purpose of committing any other injurious act.</p>	
<p>Maine%</p>	<p>ME</p>	<p>§709. Definitions. §§4. A.</p>	<p>Authority authorizing the intercept  (1) Legislature (2) Party</p>	<p>Entity Authorized to Intercept  (1) party (2) non-party</p>	<p>4. "Intercept" means to ...record or aid another to hear or record the contents of any wire ... communication through the use of any intercepting device <b>by any person other than:</b> <b>A. The sender or receiver of that communication;</b> [Emphasis added.]</p>	
		<p>§709. Definitions. §§4. C.</p>	<p>Authority authorizing the intercept  (1) Party (2) Non-party</p>	<p>Entity Authorized to Intercept  (1) non-party (2) non-party</p>	<p>4. Intercept. "Intercept" means to ...record or aid another to hear or record the contents of any wire or oral communication through the use of any intercepting device by any person other than: <b>C. A person given prior authority by the sender or receiver.</b> [Emphasis added.]</p>	

<p>Maryland%</p>	<p>MD</p>	<p>§ 10-402. Interception of communications generally; §§(c) Lawful acts.- (3)</p>	<p>Authority authorizing the intercept  Legislature</p>	<p>Entity Authorized to Intercept  party [Proviso] Every other party consents</p>	<p>(c)(3) It is lawful under this subtitle for a person to intercept a wire, ... communication where the person is a party to the communication <b>and where all</b> of the parties to the communication have given prior consent to the interception unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of this State. [Emphasis added.]</p>	<p>In general, this language was sourced from 18USC2511(2)(d) except that the word "and" was substituted for the disjunctive word "or" that separated the two clauses in 18USC2011(2)(d) and the word "one" in 18USC2511(2)(d)'s second clause was substituted by the word "all."</p> <p><b>Note:</b> Of all Jurisdictions, Maryland is the least ambiguous and most precise in its language with regard to requiring consent from every non-recording party. However, Maryland did fall into the "one-party consent" and "all-party consent" coined phrases trap. Considering that a recording party does not ask oneself for consent - it is bestowed by the legislature - the existing language would be significantly improved if the words "all of the parties" were to be struck and substituted by the words "every other party" and the word "have" were to be substituted by the word "has" for grammatical correctness.</p> <p>The language would then read: "... where the person is a party to the communication and where every other party to the communication has given prior consent to the interception...." The existing language is flawed because of the wordsmithing that was done. By replacing the disjunctive "or" between 18USC2511(2)(d)'s two clauses with the conjunctive "and," the context was changed. The federal language was written based on the concept of "two-way communication" and factored into the concept that there could also be more than two parties to any given communication. Within the first clause, the Congress bestowed consent to any party. Within the second clause the Congress delegated to any party (one of two or more) the authority to bestow consent on any non-party. In other words, Maryland's element "all of the parties" will not exist when there are only two parties to the communication, which is substantially more likely to occur than when there are three or more parties to a communication.</p>
<p>Massachusetts% (Next Page)</p>	<p>MA</p>	<p>§99. B. Definitions. §§4.</p>	<p>Authority authorizing the intercept  Every party</p>	<p>Entity Authorized to Intercept  non-party</p>	<p>B. Definitions. As used in this section— 4. The term "interception" means to ... <b>secretly</b> record, or aid another to ... <b>secretly record</b> the contents of any wire ...communication through the use of any intercepting device by any person other than a person <b>given prior authority by all parties</b> to such communication; [Emphasis added.]</p>	<p>See the <b>Rules for Analysis</b> tab or .pdf then read the associated text under the subtitle: <b>Background and Rationale re Key Question:</b> for an explanation of why this subsection's language permits an intercept by a non-party only.</p>

<p>Massachusetts% (Previous Page)</p>	<p>MA ap  s</p>	<p>§99. B. Definitions. §§4.</p> <p style="background-color: #fce4d6;">Silent</p>	<p>Authority authorizing the intercept</p> <p>Legislature</p>	<p>Entity Authorized to Intercept</p> <p><b>[Proviso]</b> any person</p>	<p>B. Definitions. As used in this section— 4. The term “interception” means to ... <b>secretly</b> record, or aid another to ... <b>secretly</b> record the contents of any wire ...communication through the use of any intercepting device by any person other than a person given prior authority by all parties to such communication; [Emphasis added.]</p>	<p>Section 99. Interception of wire and oral communications.— A. Preamble. ... The general court further finds that the uncontrolled development and unrestricted use of modern electronic surveillance devices pose grave dangers to the privacy of all citizens of the commonwealth. Therefore, the <b>secret</b> use of such devices by private individuals must be prohibited. [Emphasis added.]</p> <p>Any person may intercept the wire communication provided the element of <b>"secretly"</b> cannot be met.</p> <p>The General Laws of Massachusetts at §§99. A. 4. Preamble establishes the prohibition for a <b>"secret"</b> intercept but does not speak of a party and §§99. B. 4. operates in a manner that only allows a non-party to intercept provided the conditional elements are met. And, because no other law speaks to whether or not a party may intercept, then the General Laws of Massachusetts are <b>silent</b> on the matter; therefore, a party may intercept a wire communication with impunity.</p>
<p>Michigan% (Next Page)</p>	<p>MI np</p>	<p>§750.539c Eavesdropping upon private conversation.</p>	<p>Authority authorizing the intercept</p> <p>Every party</p>	<p>Entity Authorized to Intercept</p> <p>non-party</p>	<p>Sec. 539c. Any person who is present or who is not present during a private conversation and who willfully uses any device <b>to eavesdrop upon</b> the conversation <b>without the consent of all parties thereto</b>, or who knowingly aids, employs or procures another person to do the same in violation of this section, is guilty of a felony.... [Emphasis added.]</p>	<p><b>Caselaw:</b> Michigan; See Sullivan v. Gray 324 NW 2d 58, 60 Decided June 23, 1982. Released for Publication Sept. 22, 1982. <b>"..a participant may record a conversation with apparent impunity..."</b>. [Note that this caselaw's date, June 23, 1982, is more than 27 years past. To date, the Michigan Legislature <b>has not</b> taken action to abrogate the effects of the opinion.]</p> <p><b>[Shepard's report:</b> Time Of Request: Tuesday, September 21, 2010 17:38:04 Unrestricted Shepard's Summary: No negative case history. Citing References: Positive Analyses: Followed (2) Neutral Analyses: Explained (1) Other Sources: Law Reviews (9), Statutes (2), Treatises (5), Court Documents (2): CITING DECISIONS ( 20 citing decisions ) 750.539a Definitions. As used in sections 539a to 539i: (1) “Private place” means a place where <b>one may reasonably expect</b> to be safe from casual or hostile intrusion or surveillance but does not include a place to which the public or substantial group of the public has access. [Emphasis added.]</p> <p>(2) “Eavesdrop” or “eavesdropping” means to ..., record, ...any part of the private <b>discourse of others without the permission of all persons engaged in the discourse</b>. Neither this definition or any other provision of this act shall modify or affect any law or regulation concerning interception, divulgence or recording of messages transmitted by communications common carriers. [Emphasis added.]</p>

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Michigan % (Previous Page)	MI	Silent		Entity Permitted to Intercept party		<b>Caselaw:</b> Michigan; See Sullivan v. Gray 324 NW 2d 58, 60 Decided June 23, 1982. Released for Publication Sept. 22, 1982. "...a participant may record a conversation with apparent impunity...". [Note that this caselaw's date, June 23, 1982, is more than 27 years past. To date, the Michigan Legislature <b>has not</b> taken action to abrogate the effects of the opinion.]
Minnesota %	MN	§626A.02 Interception ... of wire ... Communications ...Subd. 2. Exemptions. §§(d)	Authority authorizing the intercept Legislature	Entity Authorized to Intercept party	(d) It is not unlawful under this chapter for a person not acting under color of law to intercept a wire, ...communication where such person is a party to the communication ...unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the United States or of any state.	The Legislature, in general, adopted the federal 1986 scheme, 18USC2511(2)(d).  It should be noted that this law " <b>surrenders</b> " to any other jurisdiction's law when there is a conflict of law and/or choice of law case.
	MN	§626A.02 Interception ... of wire ... Communications ...Subd. 2. Exemptions. §§(d)	Authority authorizing the intercept A party	Entity Authorized to Intercept non-party	(d) It is not unlawful under this chapter for a person not acting under color of law to intercept a wire, ...communication ... <b>[Disjunctive [or]]</b> where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the United States or of any state.	The Legislature, in general, adopted the federal 1986 scheme, 18USC2511(2)(d).  It should be noted that this law " <b>surrenders</b> " to any other jurisdiction's law when there is a conflict of law and/or choice of law case.
Mississippi (Next Page)	MS	§41-29-531. Exceptions... §§(e)	Authority authorizing the intercept Legislature	Entity Authorized to Intercept party	This article shall not apply to: ... (e) A person not acting under color of law who intercepts a wire, ... communication if the person is a party to the communication, ... unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of this state, or for the purpose of committing any other injurious act.	The Legislature, in general, adopted the federal 1968 scheme, 18USC2511(2)(d).
	MS	§41-29-531. Exceptions... §§(e)	Authority authorizing the intercept A party	Entity Authorized to Intercept non-party	This article shall not apply to: ... (e) A person not acting under color of law who intercepts a wire, ... communication ... <b>[Disjunctive [or]]</b> if one (1) of the parties to the communication has given prior consent to the interception unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of this state, or for the purpose of committing any other injurious act.	The Legislature, in general, adopted the federal 1968 scheme, 18USC2511(2)(d).

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Mississippi (Previous Page)	MS	p2	§41-29-535. Applicability of article.	Authority authorizing the intercept Legislature	Entity Authorized to Intercept party	This article shall not apply to a person who is a subscriber to a telephone operated by a communication common carrier and who intercepts a communication on a telephone to which he subscribes. This article shall not apply to persons who are members of the household of the subscriber who intercept communications on a telephone in the home of the subscriber.	
Missouri <sup>%</sup>	MO	f	§542.402. ...permitted activities. §§2.(3)	Authority authorizing the intercept Legislature	Entity Authorized to Intercept party	2. It is not unlawful under the provisions of sections 542.400 to 542.422: (3) For a person not acting under law to intercept a wire communication where such person is a party to the communication ... unless such communication is intercepted for the purpose of committing any criminal or tortious act.	The Legislature, in general, adopted the federal 1986 scheme, 18USC2511(2)(d).
		p	§542.402. ...permitted activities. §§2.(3)	Authority authorizing the intercept A party	Entity Authorized to Intercept non-party	2. It is not unlawful under the provisions of sections 542.400 to 542.422: (3) For a person not acting under law to intercept a wire communication where ... <b>[Disjunctive [or]]</b> one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act.	The Legislature, in general, adopted the federal 1986 scheme, 18USC2511(2)(d).
Montana	MT	ap	§45-8-213. Privacy in communications. §§(2)	Authority authorizing the intercept Legislature	Entity Authorized to Intercept <b>[Proviso]</b> any person	(2) Except as provided in 69-6-104, [hostage situation] a person commits the offense of violating privacy in communications if the person purposely intercepts an <b>electronic communication</b> [See §§(4) in Comment Section.]. <b>This subsection does not apply to</b> elected or appointed public officials or to public employees when the interception is done in the performance of official duty or to <b>persons given warning of the interception</b> [Emphasis added.] ...	<b>[Proviso - If the parties are informed of the intercept, then the intercept is permitted.]</b>  §45-8-213. Privacy in communications. <b>§§(4) "Electronic communication" means any</b> transfer between persons of signs, signals, writing, images, sounds, data, or <b>intelligence of any nature transmitted in whole or in part by a wire</b> , radio, electromagnetic, photoelectronic, or photo-optical system. [Emphasis added.]  [Note: In context, the grammatical tense of the word " <b>given</b> " is problematic.]
Nebraska (Next Page)	NE	f p	§86-290 §§(2)(c)	Authority authorizing the intercept Legislature	Entity Authorized to Intercept party	(2)(c) It is not unlawful under sections 86-271 to 86-295 for a person not acting under color of law to intercept a wire, ... communication when such person is a party to the communication ... unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any state.	The Legislature, in general, adopted the federal 1986 scheme, 18USC2511(2)(d).  It should be noted that this law " <b>surrenders</b> " to any other jurisdiction's law when there is a conflict of law and/or choice of law case.

<p>Nebraska (Previous Page)</p>	<p>NE</p>	<p>§86-290 §§(2)(c)</p>	<p>Authority authorizing the intercept</p> <p>A party</p>	<p>Entity Authorized to Intercept</p> <p>non-party</p>	<p>(2)(c) It is not unlawful under sections 86-271 to 86-295 for a person not acting under color of law to intercept a wire, ... communication ... <b>[Disjunctive [or]]</b> when one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any state.</p>	<p>The Legislature, in general, adopted the federal 1986 scheme, 18USC2511(2)(d).</p> <p>It should be noted that this law <b>"surrenders"</b> to any other jurisdiction's law when there is a conflict of law and/or choice of law case.</p>
<p>Nevada%</p>	<p>NV</p>	<p>§200.620 Interception and attempted interception ... prohibited; exceptions. §§(1)(a) and (b)(3)</p>	<p>Authority authorizing the intercept</p> <p>Legislature</p>	<p>Entity Authorized to Intercept</p> <p><b>[Provisos]</b> <b>[Intentionally left blank]</b></p>	<p>1. Except as otherwise provided in NRS 179.410 [179.410 through 179.455 are definitions; 179.458 authorizes conditional recording by a public utility; 179.460 through 179.515 are, in general, law enforcement provisions.] to 179.515, inclusive, 209.419 [Dept of Corrections] and 704.195 [Recording by Public Utilities], <b>it is unlawful for any person</b> to intercept or attempt to intercept any wire communication unless:</p> <p>(a) The interception or attempted interception is made with the <b>prior consent of one of the parties</b> to the communication; <b>and</b></p> <p>(b) An emergency situation exists <b>and</b> it is impractical to obtain a court order as required by NRS 179.410 to 179.515, inclusive, before the interception, in which event the interception is subject to the requirements of subsection 3.</p> <p>3. Any person who has made an interception in an emergency situation as provided in paragraph (b) of subsection 1 shall, within 72 hours of the interception, make a written application to a justice of the Supreme Court or district judge for ratification of the interception. The interception must not be ratified unless the applicant shows that:</p> <p>(a) An emergency situation existed and it was impractical to obtain a court order before the interception; and</p> <p>(b) Except for the absence of a court order, the interception met the requirements of NRS 179.410 to 179.515, inclusive. <b>[Emphasis added.]</b></p>	<p>The Nevada Legislature, coupled with the style in which Chapter 200 of the Nevada Revised Statutes has been codified, has enacted a set of sections that are difficult to follow. The cross referencing of sections among chapters presents numerous challenges. As an example, the term <b>"person"</b> is set out in §200.610 Definitions <b>and</b> §179.445 and each has a different meaning and each was enacted a different times.</p> <p><b>As used in NRS 200.610 to 200.690, inclusive:</b></p> <p>1. <b>"Person" includes public officials and law enforcement officers of the State and of a county or municipality or other political subdivision of the State.</b></p> <p><b>(Added to NRS by 1957, 334; A 1985, 512) [Emphasis added.]</b></p> <p>§179.445 <b>"Person" defined. "Person" means any official, employee or agent of the United States or any state or political subdivision thereof, and any individual, partnership, association, joint-stock company, trust or corporation.</b></p> <p><b>(Added to NRS by 1973, 1743) [Emphasis added.]</b></p> <p>Although this intercept scenario was most likely intended for law enforcement actions, it is being included because of the cross referenced term "person" and the caselaw below. If the caselaw were to be found in error, then the result would be that the Nevada Revised Statutes would be <b>"silent"</b> regarding a party's wire communication intercept. (NOTE: The companion §200.650 operates for oral communication, i.e., conversation.)</p> <p>For some insight into this section, see <i>Lane v. Allstate Insurance Co.</i> 969 P.2d (NV S. Ct. (1998)) 938; 944 especially ROSE, J., dissenting. This judge performed research into the legislative history of the section and it reveals factual information.</p>
<p>New Hampshire% (Next Page)</p>	<p>NH</p>	<p>§570-A:2 Interception ... of Telecommunication ... Prohibited. – §§1(a)</p>	<p>Authority authorizing the intercept</p> <p>Every party</p>	<p>Entity Authorized to Intercept</p> <p>non-party</p>	<p>570-A:2 I. A person is guilty of a class B felony if, except as otherwise specifically provided in this chapter [570-A] or <b>without the consent of all parties to the communication</b>, the person:</p> <p>(a) Willfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any telecommunication ...; <b>[Emphasis added.]</b></p>	<p>Select the <b>Rules for Analysis</b> tab or .pdf then read the associated text under the subtitle: <b>Background and Rationale re Key Question:</b> for an explanation of why this subsection's language permits an intercept by a non-party only.</p>

<p>New Hampshire% (Previous Page)</p>	<p>NH</p>	<p>Silent</p>		<p>Entity Permitted to Intercept party</p>		<p>Because the New Hampshire Statutes are silent re a party's conduct for an intercept of a wire communication; and absent good caselaw, one would assume that interception by a party is permitted. Alternatively, one could argue that 18USC2511(2)(d) and/or service provider tariffs apply.</p>
<p>New Jersey%</p>	<p>NJ</p>	<p>§2A:156A-4. Lawful interception activities; exceptions §§d.</p>	<p>Authority authorizing the intercept Legislature</p>	<p>Entity Authorized to Intercept party</p>	<p>4.It shall not be unlawful under this act for: d. A person not acting under color of law to intercept a wire, ... communication, where such person is a party to the communication ...unless such communication is intercepted or used for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of this State or for the purpose of committing any other injurious act.</p>	<p>The Legislature, in general, adopted the federal 1968 scheme, 18USC2511(2)(d).</p>
<p>New Jersey%</p>	<p>NJ</p>	<p>§2A:156A-4. Lawful interception activities; exceptions §§d.</p>	<p>Authority authorizing the intercept A party</p>	<p>Entity Authorized to Intercept non-party</p>	<p>4.It shall not be unlawful under this act for: d. A person not acting under color of law to intercept a wire, ... communication, where ... <b>[Disjunctive [or]]</b> one of the parties to the communication has given prior consent to such interception unless such communication is intercepted or used for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of this State or for the purpose of committing any other injurious act.</p>	<p>The Legislature, in general, adopted the federal 1968 scheme, 18USC2511(2)(d).</p>
<p>New Mexico</p>	<p>NM</p>	<p>§30-12-1 Interference with communications §§</p>	<p>Authority authorizing the intercept A party</p>	<p>Entity Authorized to Intercept party</p>	<p>§§30-12-1 Interference with communications consists of knowingly and without lawful authority:  C. ..., taking or copying any ..., communication ... intended for another by ... telephone <b>without the consent of a sender or intended recipient thereof</b>; [Emphasis added.]</p>	
<p>New Mexico</p>	<p>NM</p>	<p>§30-12-1 Interference with communications §§</p>	<p>Authority authorizing the intercept A party</p>	<p>Entity Authorized to Intercept non-party</p>	<p>§§30-12-1 Interference with communications consists of knowingly and without lawful authority:  C. ..., taking or copying any ..., communication ... intended for another by ... telephone <b>without the consent of a sender or intended recipient thereof</b>; [Emphasis added.]</p>	

New York	NY	sr	§ 250.00 Eavesdropping; definitions of terms. §§1.	Authority authorizing the intercept	Entity Authorized to Intercept	§§250.00 The following definitions are applicable to this article: 1. "Wiretapping" means the intentional ... recording of a telephonic ... communication <b>by a person other than a sender or receiver thereof</b> , without the consent of either the sender or receiver, by means of any instrument, device or equipment. ...	Said tariffs are most likely on file with the New York Public Service Commission. Similar information should be available for viewing and reading in the white pages of phone directories.  See tab or .pdf named <b>Federal Resources</b> then under <b>Federal Resources (continued) Federal Communications Commission</b> at ¶24 through ¶29.  This language is the same as Connecticut's §§53a-187(a)(1) "Wiretapping." The second sentence of §§53a-187(a)(1) "Wiretapping" is the operative language.
		np		A party	non-party		
New York	NY	t	§ 250.00 Eavesdropping; definitions of terms. §§1. [Second sentence only]	Authority authorizing the intercept	Entity Authorized to Intercept  [Proviso] generally, (1) every party consents for a non-party intercept (2) recorder notifies (3) beep tone	§§250.00 The following definitions are applicable to this article: 1. "Wiretapping" means the intentional ... recording of a telephonic ... communication by a person other than a sender or receiver thereof, without the consent of either the sender or receiver, by means of any instrument, device or equipment. <b>The normal operation of a telephone or telegraph corporation and the normal use of the services and facilities furnished by such corporation pursuant to its tariffs or necessary to protect the rights or property of said corporation shall not be deemed "wiretapping."</b>	
				Legislature			
North Carolina% (Next Page)	NC	ap	§ 15A 287. Interception ... of wire, ... communications prohibited. §§(a)	Authority authorizing the intercept	Entity Authorized to Intercept	§§ 15A 287 (a) Except as otherwise specifically provided in this Article, <b>a person is guilty</b> of a Class H felony <b>if, without the consent of at least one party to the communication, the person:</b> (1) Willfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, ... communication. [Emphasis added.]	[ <sup>@</sup> Key Question applies.]  15A 286. Definitions. (4) "Chapter 119 of the United States Code" means Chapter 119 of Part I of Title 18, United States Code, being Public Law 90 351, the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Electronic Communications Privacy Act of 1986.
		f	§ 15A 287. Interception ... of wire, ... communications ... §§(b)(3)	Authority authorizing the intercept	Entity Authorized to Intercept	§§ 15A 287(b) It is not unlawful under this Article for any person to: (3) Intercept any communication in a manner otherwise allowed by Chapter 119 of the United States Code.	In this case, clause one of 18USC2511(d)(2): (d) It shall not be unlawful under this chapter [119] for a person not acting under color of law to intercept a wire, ... communication where such person is a party to the communication ... unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State.
		p		Congress via Legislature	party		

<p>North Carolina% (Previous Page)</p>	<p>NC</p>	<p>np</p> <p>§ 15A 287. Interception ... of wire, ... communications ... §§(b)(3)</p>	<p>Authority authorizing the intercept Congress via A party</p>	<p>Entity Authorized to Intercept non-party</p>	<p>§§ 15A 287(b) It is not unlawful under this Article for any person to: (3) Intercept any communication in a manner otherwise allowed by Chapter 119 of the United States Code.</p>	<p>In this case, clause two of 18USC2511(d)(2):(d): (d) It shall not be unlawful under this chapter [119]for a person not acting under color of law to intercept a wire, ... communication ... <b>[Disjunctive or]</b> where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State.</p>
<p>North Dakota</p>	<p>ND</p>	<p>f</p> <p>§12.1-15-02. Interception of wire ... communications - Eavesdropping. §§3. c.(1)</p>	<p>Authority authorizing the intercept Legislature</p>	<p>Entity Authorized to Intercept party</p>	<p>§§3. It is a defense to a prosecution under subsection 1 that: c. (1) <b>The actor was a party to the communication</b> ..., and (2) such communication was not intercepted for the purpose of committing a crime or other unlawful harm. <b>[Emphasis added.]</b></p>	<p>The Legislature, in general, adopted the federal scheme, 18USC2511(2)(d).</p>
	<p>ND</p>	<p>np</p> <p>§12.1-15-02. Interception of wire ... communications - Eavesdropping. §§3. c. (1)</p>	<p>Authority authorizing the intercept A party</p>	<p>Entity Authorized to Intercept non-party</p>	<p>§§3. It is a defense to a prosecution under subsection 1 that: c. (1) ... <b>[Disjunctive or]</b> one of the parties to the communication had given prior consent to such interception, and (2) such communication was not intercepted for the purpose of committing a crime or other unlawful harm. <b>[Emphasis added.]</b></p>	<p>The Legislature, in general, adopted the federal scheme, 18USC2511(2)(d).</p>
<p>Ohio%</p>	<p>OH</p>	<p>f</p> <p>§2933.52 Interception of wire, ... communications. §§(B)(4)</p>	<p>Authority authorizing the intercept Legislature</p>	<p>Entity Authorized to Intercept party</p>	<p>§§(B) This section does not apply to any of the following: ... (4) A person who is not a law enforcement officer and who intercepts a wire, ... communication, if the person is a party to the communication ..., and if the communication is not intercepted for the purpose of committing a criminal offense or tortious act in violation of the laws or Constitution of the United States or this state or for the purpose of committing any other injurious act;</p>	<p>The Legislature, in general, adopted the federal 1968 scheme, 18USC2511(2)(d).</p>
	<p>OH</p>	<p>np</p> <p>§2933.52 Interception of wire, ... communications. §§(B)(4)</p>	<p>Authority authorizing the intercept A party</p>	<p>Entity Authorized to Intercept non-party</p>	<p>§§(B) This section does not apply to any of the following: ... (4) A person who is not a law enforcement officer and who intercepts a wire, ... communication, ... <b>[Disjunctive or]</b> if one of the parties to the communication has given the person prior consent to the interception, and if the communication is not intercepted for the purpose of committing a criminal offense or tortious act in violation of the laws or Constitution of the United States or this state or for the purpose of committing any other injurious act;</p>	<p>The Legislature, in general, adopted the federal 1968 scheme, 18USC2511(2)(d).</p>

Oklahoma%	OK	f	§13-176.4. Acts not prohibited. §§5.	Authority authorizing the intercept Legislature	Entity Authorized to Intercept party	§13-176.4. It is not unlawful pursuant to the Security of Communications Act for: ... 5. a person not acting under color of law to intercept a wire, ... communication when such person is a party to the communication ... unless the communication is intercepted for the purpose of committing any criminal act;	The Legislature, in general, adopted the federal scheme, 18USC2511(2)(d).
		p	§13-176.4. Acts not prohibited. §§5.	Authority authorizing the intercept A party	Entity Authorized to Intercept non-party	§13-176.4. It is not unlawful pursuant to the Security of Communications Act for: ... 5. a person not acting under color of law to intercept a wire, ... communication ... <b>[Disjunctive [or]]</b> when one of the parties to the communication has given prior consent to such interception unless the communication is intercepted for the purpose of committing any criminal act;	The Legislature, in general, adopted the federal scheme, 18USC2511(2)(d).
Oregon%	OR	np	§165.540 Obtaining contents of communications. §§(1)(a)	Authority authorizing the intercept Legislature	Entity Authorized to Intercept non-party	§165.540 Obtaining contents of communications. (1) ... a person may not: (a) Obtain or attempt to obtain the whole or any part of a telecommunication... <b>to which the person is not a participant</b> , by means of any device, contrivance, machine or apparatus, whether electrical, mechanical, manual or otherwise, <b>unless consent is given by at least one participant</b> . [Emphasis added.]	
		nc	§165.540 Obtaining contents of communications. §§(3)	Authority authorizing the intercept Legislature	Entity Authorized to Intercept <b>[Proviso]</b> subscriber and family member/s	(3) The prohibitions in subsection (1)(a), (b) or (c) of this section do not apply to subscribers or members of their family who perform the acts prohibited in subsection (1) of this section in their homes.	165.535 Definitions applicable to obtaining contents of communications. As used in ... 165.540 and 165.545:  (4) "Telecommunication" means the transmission of writing, signs, signals, pictures and sounds of all kinds by aid of wire, cable or other similar connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, equipment and services (including, among other things, the receipt, forwarding and delivering of communications) incidental to such transmission. [1955 c.675 §1; 1959 c.681 §1; 1983 c.740 §34]
		s	<b>Silent</b>		Entity Permitted to Intercept <b>[Proviso]</b> party		Because the Oregon Revised Statutes are silent re a party's conduct for an intercept of a wire communication other than that set out in §§165.540(3); and absent good caselaw, one would assume that interception by a party is permitted <b>provided §§165.540(3) does not apply</b> .

Pennsylvania%	PA	np	§ 5704. Exceptions to prohibition of interception ... of communications. §§(4)	Authority authorizing the intercept  Every party	Entity Authorized to Intercept  non-party	§§5704 ... <b>It shall not be unlawful</b> and no prior court approval shall be required <b>under this chapter [57] for:</b> ... (4) <b>A person, to intercept a wire, ... communication, where all parties to the communication have given prior consent to such interception.</b> [Emphasis added.]	This subsection, in part, has been adopted from the federal scheme, 18USC2511(2)(d). See the <b>Rules for Analysis</b> tab or .pdf under <b>Federal Resources</b> .  See also - select the <b>Rules for Analysis</b> tab or .pdf then read the associated text under the subtitle: <b>Background and Rationale re Key Question:</b> for an explanation of why this subsection's language permits an intercept by a non-party only.
		s	<b>Silent</b>		Entity Permitted to Intercept  party		Because the Consolidated Statutes of Pennsylvania are silent re a party's conduct for an intercept of a wire communication; and absent good caselaw, one would assume that interception by a party is permitted.
		f	§-35-21 Unauthorized interception, ... of wire, ...l communication. – §§(c)(3)	Authority authorizing the intercept  Legislature	Entity Authorized to Intercept  party	§§11-35-21... (c) It shall not be unlawful under this chapter for: ... (3) A person not acting under color of law to intercept a wire, ... communication, where the person is a party to the communication ,... unless the communication is intercepted for the purpose of committing any criminal or tortious act in the violation of the constitution or laws of the United States or of any state or for the purpose of committing any other injurious act.	The Legislature, in general, adopted the federal 1968 scheme, 18USC2511(2)(d).  It should be noted that this law " <b>surrenders</b> " to any other jurisdiction's law when there is a conflict of law and/or choice of law case.
Rhode Island%	RI	p				§§11-35-21... (c) It shall not be unlawful under this chapter for: ... (3) A person not acting under color of law to intercept a wire, ... communication, where ... <b>[Disjunctive [or]]</b> one of the parties to the communication has given prior consent to the interception unless the communication is intercepted for the purpose of committing any criminal or tortious act in the violation of the constitution or laws of the United States or of any state or for the purpose of committing any other injurious act.	The Legislature, in general, adopted the federal 1968 scheme, 18USC2511(2)(d).  It should be noted that this law " <b>surrenders</b> " to any other jurisdiction's law when there is a conflict of law and/or choice of law case.
		np	§-35-21 Unauthorized interception, ... of wire, ...l communication. – §§(c)(3)	Authority authorizing the intercept  A party	Entity Authorized to Intercept  non-party		

South Carolina%	SC	f	§17-30-30. Interception by ...where party has given prior consent. §§(C)	Authority authorizing the intercept Legislature	Entity Authorized to Intercept party	§§(C) It is lawful under this chapter [30] for a person not acting under color of law to intercept a wire... communication where the person is a party to the communication ....	The Legislature, in general, adopted the federal scheme, 18USC2511(2)(d).
		p	§17-30-30. Interception by ...where party has given prior consent. §§(C)	Authority authorizing the intercept A party	Entity Authorized to Intercept non-party	§§(C) It is lawful under this chapter [30] for a person not acting under color of law to intercept a wire...communication ... where one of the parties to the communication has given prior consent to the interception.	The Legislature, in general, adopted the federal scheme, 18USC2511(2)(d).
South Dakota%	SD	sr	§23A-35A-20. ... recording telephone ... communications	Authority authorizing the intercept A party	Entity Authorized to Intercept non-party	§23A-35A-20. ... recording telephone ... communications, ... by means of eavesdropping device as felony. Except as provided in §23A-35A-21, a person is guilty of a Class 5 felony who being: (1) <b>Not a sender or receiver</b> of a telephone ... communication, intentionally and by means of an eavesdropping device ... records a telephone ... communication, or aids, authorizes, employs, procures, or permits another to so do, <b>without the consent of either</b> a sender or receiver thereof; ... [Emphasis added.]	
		t	§23A-35A-21. Exemptions §§(2)	Authority authorizing the intercept Legislature	Entity Authorized to Intercept [Proviso] generally, (1) every party consents for a non-party intercept @ (2) recorder notifies (3) beep tone	23A-35A-21. <b>Exemptions</b> .... The following is exempt from the provisions of this chapter [35A]: ... (2) The normal use of services, equipment, and facilities provided by a common carrier <b>pursuant to tariffs on file with the Public Utilities Commission of the State of South Dakota or the Federal Communications Commission;</b>	<p>[@ Key Question applies.]</p> <p>Similar information should available for viewing and reading in the white pages of phone directories.</p> <p>See tab or .pdf named <b>Federal Resources</b> then under Federal Resources (continued) <b>Federal Communications Commission</b> at ¶24 through ¶29.</p> <p>For all intents and purposes, this language is the same as Arizona's §13-3012. Exemptions. §§2. and Colorado's §18-9-305. Exceptions. §§(2). See also Connecticut and New York.</p>

Tennessee	TN	f	§39-13-601. Wiretapping ... Exceptions. — §§(b)(5)	Authority authorizing the intercept Legislature	Entity Authorized to Intercept party	§39-13-601. ... §§(b)(5) It is lawful under §§ 39-13-601 — 39-13-603 and title 40, chapter 6, part 3 for a person not acting under color of law to intercept a wire, ... communication, where the person is a party to the communication ..., unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the state of Tennessee.	The Legislature, in general, adopted the federal scheme, 18USC2511(2)(d).
		p					
		np	§39-13-601. Wiretapping ... Exceptions. — §§(b)(5)	Authority authorizing the intercept A party	Entity Authorized to Intercept non-party	§39-13-601. ... §§(b)(5) It is lawful under §§ 39-13-601 — 39-13-603 and title 40, chapter 6, part 3 for a person not acting under color of law to intercept a wire,...communication, ... <b>[Disjunctive [or]]</b> where one of the parties to the communication has given prior consent to the interception, unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the state of Tennessee.	The Legislature, in general, adopted the federal scheme, 18USC2511(2)(d).
Texas	TX	f	§16.02. UNLAWFUL INTERCEPTION, ... OF WIRE, .... §§(c)(4)(A)	Authority authorizing the intercept Legislature	Entity Authorized to Intercept party	§16.02. ... §§(c) It is an affirmative defense to prosecution under Subsection (b) that: ... (4) a person not acting under color of law intercepts a wire, oral, or electronic communication, if: (A) the person is a party to the communication; or	The Legislature, in general, adopted the federal scheme, 18USC2511(2)(d).
		p					
		np	§16.02. UNLAWFUL INTERCEPTION, ... OF WIRE, .... §§(c)(4)(B)	Authority authorizing the intercept A party	Entity Authorized to Intercept non-party	§16.02. ... §§(c) It is an affirmative defense to prosecution under Subsection (b) that: ... (4) a person not acting under color of law intercepts a wire, oral, or electronic communication, if: .. <b>[Disjunctive [or]]</b> (B) one of the parties to the communication has given prior consent to the interception, unless the communication is intercepted for the purpose of committing an unlawful act;	The Legislature, in general, adopted the federal scheme, 18USC2511(2)(d).

Utah%	UT	f	§77-23a-4. ... Lawful interception. §§(7)(b)	Authority authorizing the intercept Legislature	Entity Authorized to Intercept party	§§77-23a-4(7)(b) A person not acting under color of law may intercept a wire... communication if that person is a party to the communication ..., unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of state or federal laws.	The Legislature, in general, adopted the federal scheme, 18USC2511(2)(d).  It should be noted that this law <b>"surrenders"</b> to any other jurisdiction's law when there is a conflict of law and/or choice of law case.
		p	§77-23a-4. ... Lawful interception. §§(7)(b)	Authority authorizing the intercept A party	Entity Authorized to Intercept non-party	§§77-23a-4(7)(b) A person not acting under color of law may intercept a wire... communication if ... <b>[Disjunctive [or]]</b> one of the parties to the communication has given prior consent to the interception, unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of state or federal laws.	The Legislature, in general, adopted the federal scheme, 18USC2511(2)(d).  It should be noted that this law <b>"surrenders"</b> to any other jurisdiction's law when there is a conflict of law and/or choice of law case.
Vermont	VT	s	<b>Silent</b>				As best as can be known when this document was developed (October 2010 - ????) there was no law regarding this subject within the Vermont Statutes and no caselaw was found. As a result, it is unclear what role 18USC2511(2)(d) or the telecommunications service provider tariffs would have in any caselaw. The only caselaw found is <i>State v. Fuller</i> 503 A.2d 550 (1985) where Fuller alleged that a recording was made in violation of 18USC251(1). However the court's opinion did not address the allegation. At page 551 the court wrote "Even if the act of recording ... was in violation of federal statute, a question we need not decide here, .... See also, 54 NY School of Law Law Review 147, 150.
Virginia%	VA	f	§19.2-62. Interception, ..., of wire, ...communications ... ; exceptions. §§B.2.	Authority authorizing the intercept Legislature	Entity Authorized to Intercept party	§§19.2-62B.2. It shall not be a criminal offense under this chapter [6] for a person to intercept a wire, ... communication, where such person is a party to the communication....	The Legislature, in general, adopted the federal scheme, 18USC2511(2)(d).
		p	§19.2-62. Interception, ..., of wire, ...communications ... ; exceptions. §§B.2.	Authority authorizing the intercept A party	Entity Authorized to Intercept non-party	§§19.2-62B.2. It shall not be a criminal offense under this chapter [6] for a person to intercept a wire,... communication, where ... <b>[Disjunctive [or]]</b> one of the parties to the communication has given prior consent to such interception.	The Legislature, in general, adopted the federal scheme, 18USC2511(2)(d).

Washington	WA	np	<p>§9.73.030 Intercepting, ... private communication - Consent required - Exceptions. §§(1)(a)</p>	<p>Authority authorizing the intercept</p> <p>Every party</p>	<p>Entity Authorized to Intercept</p> <p>non-party</p>	<p>§§9.73.030 ...</p> <p>(1) Except as otherwise provided in this chapter [9.73], it shall be unlawful for any individual, partnership, corporation, association, or the state of Washington, its agencies, and political subdivisions to intercept, or record any:</p> <p>(a) Private communication transmitted by telephone,... between two or more individuals between points within or without the state by any device electronic or otherwise designed to record and/or transmit said communication regardless how such device is powered or actuated, <b>without first obtaining the consent of all the participants in the communication</b>; [Emphasis added.]</p>	<p>See the <b>Rules for Analysis</b> tab or .pdf then read the associated text under the subtitle: <b>Background and Rationale re Key Question</b>: for an explanation of why this subsection's language permits an intercept by a non-party only.</p>
		p	<p>§9.73.030 Intercepting, ... private communication - Consent required - Exceptions. §§(3)</p>	<p>Authority authorizing the intercept</p> <p>Legislature</p>	<p>Entity Authorized to Intercept</p> <p><b>[Proviso] announce</b></p> <p>party</p>	<p>§§9.73.030 ...</p> <p>(3) Where consent by all parties is needed pursuant to this chapter [9.73], <b>consent shall be considered obtained whenever one party has announced to all other parties engaged in the communication</b> ..., in any reasonably effective manner, that such communication ... is about to be recorded .... [Emphasis added.]</p>	<p>This language provides additional proof that a party <b>does not</b> give oneself consent. Here the Legislature recognized the fact that a party may choose to intercept and provided for that by requiring prior disclosure through "any reasonably effective" announcement "<b>to all other parties engaged in the communication.</b>" As a result, any <b>other party</b> that remained engaged in the communication gave an implied or informed consent.</p>
		t	<p>§9.73.070 Persons and activities excepted from chapter. §§(1)</p>	<p>Authority authorizing the intercept</p> <p>Legislature</p>	<p>Entity Authorized to Intercept</p> <p><b>[Proviso]</b> generally, (1) every party consents for a non-party intercept @ (2) recorder notifies (3) beep tone</p>	<p>§§9.73.070 ...</p> <p>(1) The provisions of this chapter shall not apply to any activity in connection with services provided by a common carrier <b>pursuant to its tariffs on file with the Washington utilities and transportation commission or the Federal Communication Commission</b> ... [Emphasis added.]</p>	<p><b>[ @ Key Question applies.]</b></p> <p>It should be noted that the FCC does not have a regulation governing the recording of intrastate wire communications. However there is a standing order that each regulated provider of wire communications submit a tariff that is consistent with 47CFR64.501. See FCC Reports Vol. 2, No. 2, 502-506 at 505 ¶127 and ¶128. Because the Legislature knowingly and willfully incorporated service provider <b>tariff</b> requirements into this section, the <b>tariffs</b> operate as the law of this jurisdiction. It is the same as though the Legislature has transcribed said <b>tariffs</b> into the section's language itself.</p> <p>See tab or .pdf named <b>Federal Resources</b> then under <b>Federal Resources</b>(continued) at Federal Communications Commission.</p> <p>For all intents and purposes, this language is the same as Arizona's §13-3012. Exemptions. §§2. and Colorado's §18-9-305. Exceptions. §§(2). See also Connecticut and New York.</p>

West Virginia%	WV	f	§62-1D-3. Interception of communications generally. §§(e)	Authority authorizing the intercept Legislature	Entity Authorized to Intercept party	§§62-1D-3 ... (e) It is lawful under this article [1D] for a person to intercept a wire, ... communication where the person is a party to the communication ... unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the United States or the constitution or laws of this state:	The Legislature, in general, adopted the federal scheme, 18USC2511(2)(d).
		p	§62-1D-3. Interception of communications generally. §§(e)	Authority authorizing the intercept A party	Entity Authorized to Intercept non-party	§§62-1D-3 ... (e) It is lawful under this article [1D] for a person to intercept a wire, ... communication ... <b>[Disjunctive [or]]</b> where one of the parties to the communication has given prior consent to the interception unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the United States or the constitution or laws of this state:	The Legislature, in general, adopted the federal scheme, 18USC2511(2)(d).
Wisconsin	WI	f	§968.31 Interception... of wire,... communications prohibited. §§(2)(c)	Authority authorizing the intercept Legislature	Entity Authorized to Intercept party	§§968.31 ... (2) It is not unlawful under ss. 968.28 to 968.37: ... (c) For a person not acting under color of law to intercept a wire, ...communication where the person is a party to the communication ...unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the United States or of any state or for the purpose of committing any other injurious act.	The Legislature, in general, adopted the 1968 federal scheme, 18USC2511(2)(d).  It should be noted that this law " <b>surrenders</b> " to any other jurisdiction's law when there is a conflict of law and/or choice of law case.
		p	§968.31 Interception... of wire,... communications prohibited. §§(2)(c)	Authority authorizing the intercept A party	Entity Authorized to Intercept non-party	§§968.31 ... (2) It is not unlawful under ss. 968.28 to 968.37: ... (c) For a person not acting under color of law to intercept a wire, ... communication ... <b>[Disjunctive [or]]</b> where one of the parties to the communication has given prior consent to the interception unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the United States or of any state or for the purpose of committing any other injurious act.	The Legislature, in general, adopted the 1968 federal scheme, 18USC2511(2)(d).  It should be noted that this law " <b>surrenders</b> " to any other jurisdiction's law when there is a conflict of law and/or choice of law case.
		np					

Wyoming	WY	f	§7-3-702. Prohibition against interception ... of wire, ... communications; exceptions; ... §§(b)(iv)	Authority authorizing the intercept  Legislature	Entity Authorized to Intercept  party	§§7-3-702 ... ... (b) Nothing in subsection (a) of this section prohibits: ... (iv) Any person from intercepting a[ ] ... wire ... communication where the person is a party to the communication ... unless the communication is intercepted for the purpose of committing any criminal or tortious act; ...	The Legislature, in general, adopted the 1968 federal scheme, 18USC2511(2)(d).
		p	§7-3-702. Prohibition against interception ... of wire, ... communications; exceptions; ... §§(b)(iv)	Authority authorizing the intercept  A party	Entity Authorized to Intercept  non-party	§§7-3-702 ... ... (b) Nothing in subsection (a) of this section prohibits: ... (iv) Any person from intercepting a[ ] ... wire ...communication ... <b>[Disjunctive or]</b> where one (1) of the parties to the communication has given prior consent to the interception unless the communication is intercepted for the purpose of committing any criminal or tortious act; ...	The Legislature, in general, adopted the 1968 federal scheme, 18USC2511(2)(d).
		np					

Statistics - page 1 of 1	Statistical Information						
<p><b>Follows federal = f</b> - The cell or rectangle to the immediate right contains the number of jurisdictions within the <b>Analysis Worksheet</b> where its body of laws have been determined to be sourced from and/or patterned after the federal 18USC2511(2)(d) where both clauses are in effect, i.e., <b>Legislature authorizes party</b> and a <b>party authorizes a non-party</b>.</p>	25	<p><b>Tariffs = t or t2</b> - The cells or rectangle to the immediate right contains the number of jurisdictions within the <b>Analysis Worksheet</b> where its body of laws have been determined to have enacted language that makes operative the applicable <b>tariffs</b> of wire communications service providers. ("Tariff" means schedules of ...regulations filed by common carriers. See 47CFR61.3(rr).) Said <b>tariffs</b> govern a party's conduct for recording intrastate wire communications. <b>Tariffs</b> are on file at Public Utility Commissions. This then causes the jurisdiction to require all party consent for recording. (<b>t2</b> is scored when a jurisdiction effectively incorporates the tariff language in a second section/subsection - see CA and CT.) For background see the <b>Federal Resources worksheet</b> under <b>Federal Communications Commission</b>.</p>	<p>t</p> <p>7</p> <p>t2</p> <p>2</p>	<p><b>Sender/Receiver = sr</b> - The cell or rectangle to the immediate right contains the number of jurisdictions where its body of laws have been determined to use "sender or receiver" with regard to any given wire communication that has been intercepted by a non-party under such jurisdiction.</p>	7	<p><b>Party = p or p2</b> (Second instance same jurisdiction) - The cells or rectangle to the immediate right contains the number of jurisdictions within the <b>Analysis Worksheet</b> where its body of laws have been determined to have enacted language that authorizes a <b>party</b> to intercept a wire communication. The term "<b>party</b>" will be set out in the Entity Authorized to Intercept column and means that the laws language was crafted in a manner that permits a scenario where either a party or non-party is authorized to intercept.</p>	<p>p</p> <p>31</p> <p>p2</p> <p>2</p>
<p><b>Silent = s</b> - The cell or rectangle to the immediate right contains the number of jurisdictions within the <b>Analysis Worksheet</b> where its body of laws have been determined to be "<b>Silent</b>" with regard to any given wire communication that has been intercepted by a <b>party</b> under such jurisdiction.</p>	10		<p><b>Not Classified = nc</b> - The cell to the immediate right contains the number of jurisdictions where its body of laws have been determined to set out "an exemption," which permits a wire communication intercept, that was found to be "rare or unique." See AK, GA, IL, and OR.</p>	5	1		
<p><b>Non-party = np or np2</b> (Second instance same jurisdiction) - The cell or rectangle to the immediate right contains the number of jurisdictions within the <b>Analysis Worksheet</b> where its body of laws have been determined to allow the interception of a wire communication by a non-party. A Non-party could be set out in the Entity Authorized to Intercept column as: non-party, any person, or an individual.</p>	<p>np</p> <p>48</p> <p>np2</p> <p>2</p>	<p><b>Any person = ap</b> - The cell or rectangle to the immediate right contains the number of jurisdictions within the <b>Analysis Worksheet</b> where its body of laws have been determined to allow the interception of a wire communication by any person. The term "any person" will be set out in the Entity Authorized to Intercept column and means that the laws language was crafted in a manner that permits a scenario where either a party or non-party is authorized to intercept.</p>	13				