

TEXAS WIRETAPPING LAW

In a Nutshell

1. One party consent is required.
2. Violation is a felony.
3. A law suit may also be brought in civil court

Texas law makes it a second-degree felony to intentionally intercept (using a device) or attempt to intercept any wire, electronic or oral communication, or have someone intercept a communication on one's behalf. Violation is punishable by imprisonment of two to twenty years, a fine of up to \$10,000 or both.

It is also prohibited to intentionally use, attempt to use or have someone else use "any electronic, mechanical, or other device" to intercept an oral communication when the device transmits by radio or by a signal through "a wire, cable, or other like connection" used in wire communication.

Texas also makes it illegal to intentionally disclose any information concerning the substance, purport or meaning of such a communication if one knows or has reason to know that the information was obtained in violation of the statute. An offense is committed when someone uses the contents of a communication if he or she knows or is "reckless" about whether the information was obtained by an unlawful interception.

It is an offense to "knowingly or intentionally effect a covert entry" (meaning an illegal trespass) for the purpose of intercepting wire, oral or electronic communications without court order or authorization.

Reasonable expectation of privacy

The statute requires a reasonable expectation of privacy for oral communications. To be protected, an oral communication must be uttered by a person exhibiting an expectation that the communication is not subject to interception, under circumstances that justify that expectation.

Consent

In Texas it is legal for a person to intercept a communication in which the person is a party to the communication 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 a crime, tort or any other injurious act.

What is covered

It is legal to intercept radio communications that are transmitted by any governmental, law enforcement, civil defense or public safety communications system if they are readily accessible to the general public. A 1997 amendment makes it illegal to intercept radio communications transmitted by law enforcement representatives to or from a mobile data

terminal. The 1997 amendment also makes interception of a cordless telephone communication transmitted between a cordless telephone handset and a base unit illegal.

A person is guilty of a state jail felony if he or she possesses a device and knows or has reason to know that the device is designed primarily for nonconsensual interception of communications and that it has been or will be used for an unlawful purpose. The violation is punishable by a jail term of between 180 days and two years, a fine of up to \$10,000 or both. Any device used or possessed in violation of the statute may be seized and forfeited to the state.

Civil remedies

A party to a communication may sue a person who intercepts, attempts to intercept, or gets someone else to intercept or attempt to intercept the communication; or who uses or divulges information that he knows or reasonably should know was obtained by interception of the communication.

A person whose communication is intercepted may obtain an injunction prohibiting further interception as well as "divulgence or use of information" obtained by an interception. The plaintiff may also receive either actual damages or statutory damages calculated at \$100 per day of violation or \$1,000, whichever is higher. Punitive damages, reasonable attorney's fees and court costs are also available.

Sources

Texas [Penal] Code Annotated Sections 12.33, 12.35, 16.01 (West 1997); 1997 Tex. Gen. Laws 1051; Texas [Civil Practice and Remedies] Code Annotated Sections 123.002, 123.004 (West 1997); Texas Code of Criminal Procedure Annotated Article 18.20 (West 1997).