

Privacy, Recording Devices and Security, Part 1

Does California law prohibit recording others?

Yes, sometimes. California Penal Code, Section 632, (the “eavesdropping statute”) provides that a person may not use a recording device to eavesdrop upon or record a confidential communication without the consent of all parties to that communication.

What is a confidential communication?

Any communication carried on in circumstances that reasonably indicate that any party to the communication expects it to be confined to the parties thereto. For example, in most cases a communication between people within their own home would reasonably be interpreted as being a confidential communication confined to those in the home.

What are the penalties for recording a confidential communication?

- (a) A fine of up to \$2,500 per violation
- (b) Imprisonment for up to one year
- (c) Possibly both a fine and imprisonment

What is NOT a confidential communication?

Any communication (1) made in a public gathering or (2) in which the parties may reasonably expect that the communication may be overheard or recorded.

Are there any other exceptions to the eavesdropping statute?

Yes, a person who records another is not subject to the law if that person is known by all parties to the confidential communication to be overhearing or recording the communication.

What other laws might apply to privacy concerns?

Article I, Section 1 of the California Constitution provides that all people have inalienable rights, including pursuing and obtaining privacy. However, not every act which impacts privacy results in a violation of the California Constitution – there must be an act that constitutes an egregious breach of social norms. And while privacy rights are high in one’s own home, the law is not necessarily applied the same when in someone else’s home.