

50 State Guide To Electronic Surveillance Statutes

The chart below lists the state statutes governing real-time lawful electronic surveillance. To understand the chart some background is required.

Just as federal law enforcement agencies (LEAs) such as the Federal Bureau of Investigation and Drug Enforcement Administration investigate federal crimes, state and local LEAs such as the Montana Highway Patrol and the Akron Police Department investigate state-level crimes. Federal investigations are supervised by the federal courts, which are governed by the statutes of the U.S. Congress. State and local investigations are supervised by state courts, which are governed by statutes of the state legislatures. A joint-federal-state investigation is subject to both legal hierarchies.

The federal statutes generally prohibit real-time electronic surveillance as a violation of privacy rights. However, they permit limited exceptions from that rule for LEA investigations. These special provisions strictly regulate a federal court's power to approve and supervise federal LEA surveillance activity. If an LEA departs from the process it may be barred by the "exclusionary rule" from using the resulting evidence at the suspect's trial.




Federal law also permits exceptions from the general no-surveillance rule for other purposes. For example, a communication service provider may monitor its network traffic to maintain the network, and a company may initiate an automated response to a customer call with the message, "this call may be recorded for quality assurance."

There are two basic ways an LEA may monitor a criminal suspect's electronic communications in real time. One technique is known as a lawful intercept, or "wiretap." A wiretap enables the LEA to overhear and record the content of a suspect's telephone calls or view and record the content of a person's Internet sessions. The other technique is called a pen register and trap and trace, or "pen-trap." A pen-trap gathers only the non-content profile data, or "metadata," of the suspect's phone call or Internet session. Federal law permits both wiretaps and pen-traps.




About half the states have adopted surveillance statutes that track the federal scheme. In particular, they generally prohibit real-time surveillance, permit strictly limited exceptions for LEAs to use wiretaps and pen-traps, impose an exclusionary rule for evidence gathered through improper surveillance, and permit exceptions for certain non-LEA purposes.

Some state criminal codes (e.g. in Illinois and Massachusetts) authorize courts to approve only one type of real-time surveillance (e.g. wiretaps but not pen-traps). Other states (e.g. Kentucky and Michigan) do not let their courts approve either technique. For each state, the chart below cites the code provisions, if any, which authorize LEA wiretaps and/or pen-traps.

In a state that does not permit wiretaps or pen-traps, LEAs are subject to the state's general prohibition against real-time surveillance. They must therefore solve crimes using other investigative methods. They could, for example, serve a court order on a phone company to disclose a suspect's past phone bills so they can retrace the person's past calling activity. Gathering such "historic records" is widely considered less intrusive of privacy than listening to phone conversations or tracking call metadata in real time.

STATE	STATUTE	TITLE	COMMENTS
AL	 N/A	N/A	No authority for wiretaps or pen-traps.
AK	 Alaska Stat. §42.20.310	Communications, Eavesdropping, and Wiretapping	Authorizes wiretaps.
	Alaska Stat. §12.37.200	Pen Register & Trap Devices	Authorizes pen-traps.
AZ	 A.R.S. §§ 13-3001 - 3019	Eavesdropping and Communication	Authorizes wiretaps and pen-traps.
AR	 A.C.A. § 5-60-120	Interception and Recording	Authorizes wiretaps and pen-traps.
CA	 Cal Pen Code §§ 629.50 - 629.98	Interception of Wire, Electronic Digital Pager, or Electronic Cellular Telephone Communications	Authorizes wiretaps.
	Judicial warrant. See Opinion of Attorney General, 69 Op. Cal. Atty Gen. 55 (1986).	N/A	Authorizes pen-traps.
CO	 C.R.S. 16-15-102	Wiretapping and Eavesdropping	Authorizes wiretaps.
	C.R.S. 18-9-305	Exceptions	Authorizes pen-traps.
CT	 Conn. Gen. Stat. § 54-41a -u	Wiretapping and Electronic Surveillance	Authorizes wiretaps.
	D. Conn. L. Cr. R. 57	Rules by District Courts	Authorizes pen-traps.

DE		11 Del. C. §§ 2401-2412	Wiretapping, Electronic Surveillance and Interception of Communications	Authorizes wiretaps.
		11 Del. C. §§ 2430-2434	Pen Registers and Trap and Trace Devices	Authorizes pen-traps.
DC		D.C. Code §§ 23-541 -556	Wire Interception and Interception of Oral Communications	Authorizes wiretaps. Does not authorize pen-traps but a judge may order a pen-trap using a search warrant. Davis v. United States, 390 A.2d 976, 1978 D.C. App. LEXIS. 397 (D.C. 1978).
FL		Fla. Stat. §§ 934.02 - .42	Security Of Communications; Surveillance	Authorizes wiretaps and pen-traps.
GA		O.C.G.A. §§ 16-11-60 - 69	Wiretapping, Eavesdropping, Surveillance, And Related Offenses	Authorizes wiretaps and pen registers.
HI		HRS §§ 803-41 - 49	Electronic Eavesdropping	Authorizes wiretaps and pen registers.
ID		Idaho Code §§ 18-6701 - 6725	Communications Security	Authorizes wiretaps and pen registers.
IL		§ 725 ILCS 5/108B-8	Electronic Criminal Surveillance	Authorizes wiretaps in limited circumstances but not pen-traps.
IN		Burns Ind. Code Ann. § 35-33.5-2.1 through 5-6	Interception of Telephonic or Telegraphic Communications	Authorizes wiretaps.
		Burns Ind. Code Ann. § 35-33-5-1	Issuance of Warrants	Authorizes pen-traps.
IA		Iowa Code §§ 808B.1 through 808B.14	Interceptions of Communications	Authorizes wiretaps and pen-traps.
KS		K.S.A. §§ 22-2514 - 2519	Authorized interception of wire, oral or electronic communications	Authorizes wiretaps and pen-traps.
KY		N/A	N/A	No authority for wiretaps or pen-traps.
LA		La. R.S. 15:1302 through 15:1316	Interception of Communications and Related Matters	Authorizes wiretaps and pen-traps.
MA		ALM GL ch. 272, § 99	Eavesdropping, Wire Tapping, and Other Interception of Communications	Authorizes wiretaps but not pen-traps.
MD		Md. COURTS AND JUDICIAL PROCEEDINGS Code Ann. §§ 10-401 through 10-414	Wiretapping and Electronic Surveillance	Authorizes wiretaps.
		Md. COURTS AND JUDICIAL PROCEEDINGS Code Ann. §§ 10-4B-01 through 10-4B-05	Pen Registers and Trap and Trace Devices	Authorizes pen-traps.
ME		N/A	N/A	No authority for wiretaps or pen-traps.
MI		N/A	N/A	No authority for wiretaps or pen-traps.
MN		Minn. Stat. §§ 626A.01 through 626A.25	Privacy of Communications or Wire, Electronic, and Oral Interception	Authorizes wiretaps.
		Minn. Stat. §§ 626A.35 through 626A.35-391	Pen Register; Trap and Trace Device; Mobile Tracking Device	Authorizes pen-traps.

MS		Miss. Code Ann. §§ 41-29-501 through 41-29-536	Interception of Wire or Oral Communications	Authorizes wiretaps.
		Miss. Code Ann. §§ 41-29-701	Procedures for use of Pen Register	Authorizes pen-traps.
MO		§§ 542.400 through 542.422 R.S.Mo.	Wiretapping	Authorizes wiretaps and pen-traps.
MT		Mont. Code Anno., §§ 46-4-401 through 405	Investigative Procedures - Custodial Interrogations -- Recording [Pen register / Trap and Trace Devices]	There is no authority for wiretaps, but a pen-trap may be authorized upon a showing of probable cause.
NE		R.R.S. Neb. § 86-2,100	Intercepted Communications	Authorizes wiretaps.
		R.R.S. Neb. § 86-291 & 293	Pen Register; Trap and trace device; court order	Addresses pen-traps.
NV		Nev. Rev. Stat. Ann. §§ 179.410 through 176.515	Interception of Wire or Oral Communication	Authorizes wiretaps.
		Nev. Rev. Stat. Ann. §§ 179.530	Order authorizing use of pen register or trap and trace device.	Authorizes pen-traps.
NH		RSA 570-A:1 through 570-A:11	Wiretapping and Eavesdropping	Authorizes wiretaps.
		RSA 570-B:1 through 570-B:7	Pen Register, Trap and Trace Devices	Authorizes pen-traps.
NJ		N.J. Stat. §§ 2A:156A-1 through 2A:156A-34	New Jersey Wiretapping And Electronic Surveillance Control Act	Authorizes wiretaps but not pen-traps.
NM		N.M. Stat. Ann. §§ 30-12-1 through 30-12-11	Abuse of Privacy	Authorizes wiretaps but not pen-traps.
NY		N.Y. CRIM. PRO. Law §§ 700.05-.70	Eavesdropping and Video Surveillance Warrants	Authorizes wiretaps.
		N.Y. CRIM. PRO. Law §§ 705.00 - 705.35	Pen Registers and Trap and Trace Devices	Authorizes pen-traps.
NC		N.C. Gen. Stat. §§ 15A-286 through 15A-297	Electronic Surveillance	Authorizes wiretaps.
		N.C. Gen. Stat. §§ 15A-260 through 15A-264	Pen Registers and Trap and Trace Devices	Authorizes pen-traps.
ND		N.D. Cent. Code, §§ 29-29.2-01 through -05	Wiretapping in Drug Offense Investigations	Authorizes wiretaps only for drug investigations.
		N.D. Cent. Code, §§ 29-29.3-01 through -05	Pen Registers and Trap and Trace Devices	Authorizes pen-traps.
OH		ORC Ann. 2933.51	Search Warrants, Wiretapping and Electronic Surveillance	Authorizes wiretaps.
		ORC Ann. 2933.76	Authorization of Pen Register or Tap and Trace Device	Authorizes pen traps.
OK		OKLA. STAT. tit. 13, §§ 176.1--14, 177.1--5 (2002)	Security of Communications	Authorizes wiretaps and pen-traps.
OR		ORS §§ 133.721 -133.739	Interception of Communications	Authorizes wiretaps.
		ORS §§ 165.657 - 165.669	Use of Pen Registers and Trap and Trace Devices	Authorizes pen-traps.
PA		18 Pa.C.S. § 5701 through 18 Pa.C.S. § 5775	Wiretapping and Electronic Surveillance	Authorizes wiretaps and pen-traps.
RI		R.I. Gen. Laws §§ 12-5.1-1 through 12-5.1-16	Interception of Wire and Oral Communications	Authorizes wiretaps.
		R.I. Gen. Laws §§ 12-5.2-1 through 12-5.2-5	Pen Registers and Trap and Trace Devices	Authorizes pen-traps.
SC		S.C. Code Ann. §§ 17-30-10 through 17-30-145	Interception of Wire, Electronic, or Oral Communications	Authorizes wiretaps.
		S.C. Code Ann. § 17-30-45	Pen Register and Trap and Trace Devices	Authorizes pen-traps.

SD		S.D. Codified Laws §§ 23A-35A-1 through 23A-35A-34	Interception of Wire or Oral Communications	Authorizes wiretaps and pen-traps.
TN		Tenn. Code Ann. §§ 40-6-301 through 40-6-311	Wiretapping and Electronic Surveillance	Authorizes wiretaps and pen-traps.
TX		Tex. Code Crim. Proc. art. 18.20	Interception and Use of Wire, Oral, or Electronic Communications	Authorizes wiretaps.
		Tex. Code Crim. Proc. Art. 18.21	Pen Registers and Trap and Trace Devices; Access to Stored Communications; Mobile Tracking Devices	Authorizes pen-traps.
UT		Utah Code Ann. §§ 77-23a-1 through 77-23a-16	Interception of Communications	Authorizes wiretaps and pen-traps.
VT		N/A	N/A	No authority for wiretaps or pen-traps.
VA		Va. Code Ann. §§ 19.2-61 through 19.2-70.3	Interception Of Wire, Electronic Or Oral Communications	Authorizes wiretaps and pen-traps.
WA		Rev. Code Wash. (ARCW) §§ 9.73.010 through 9.73.260	Privacy, Violating Right of	Authorizes wiretaps and pen-traps.
WV		W. Va. Code §§ 62-1D-2 through 62-1D-16	Wiretapping and Electronic Surveillance	Authorizes wiretaps and pen-traps.
WI		Wis. Stat. §§ 968.27 through 968.37	Interception and Disclosure of Wire, Electronic or Oral Communications Prohibited	Authorizes wiretaps and pen-traps.
WY		Wyo. Stat. §§ 7-3-701 through 7-3-712	Communication Interception	Authorizes wiretaps.
		Wyo. Stat. §§ 7-3-801 through 7-3-806	Issuance of an Order for a Pen Register or a Trap and Trace Device.	Authorizes pen-traps.