

RECORDING AND EAVESDROPPING ON CONVERSATIONS

5514

(No. 6 January 1999)

The recording of conversations is governed by Penal Code Section 630, et seq., and carries a penalty for violation of \$2,500 and one year in jail. The basic premise of the law is that it is a violation to record anyone when they have an expectation that the communication is confidential. The disposition of the recording is inconsequential. Also, whether or not the conversation is considered confidential depends upon the opinion of those involved in the conversation. Generally, the presence of three or more individuals, even a sizeable group, does not necessarily render the conversation non-confidential.

The restrictions of Penal Code 630, et seq. also extends to intentional eavesdropping on conversations. This particularly applies where there are multiple telephone extensions, conference calling options and speakerphone capabilities. Anytime there are individuals listening in on the conversation other than those conducting the conversation, all parties must be made aware of whom is present and/or listening.

The use of recording devices to record conversations can be valuable when conducting investigations, or in other circumstances where it is important to preserve conversation verbatim. Recording devices allow the investigator to focus on the questioning or the discussion at hand rather than on taking notes.

Any conversation may be recorded if all parties to the conversation have given their permission to do so. This applies to both face-to-face communications and communications over the telephone. It is recommended that the recording include the request for permission and the affirmative response.

Secret recording of conversations can be done for investigative purposes in only two ways. Recording of telephone conversations (including cell phones and portable phones) can only be done in extremely limited instances (for example, prank caller), or with a search warrant from the court. Investigators must contact their local District Attorney for assistance in securing this warrant.

The secret recording of face-to-face conversations can be done by, or under the direction of, certain law enforcement groups exempted by Penal Code Section 633. An official opinion by the Attorney General (CV 71-148) has confirmed that only district attorneys, deputy sheriffs, local police officers and any Highway Patrol officers fall under this exemption. Forest practice investigators should approach one of these groups to arrange for secret recordings under their direction, when needed.

FORMS AND/OR FORMS SAMPLES: RETURN TO ISSUANCE HOME PAGE
FOR FORMS/FORMS SAMPLES SITE LINK.

[\(See next section\)](#)

[\(See Table of Contents\)](#)