

WIRETAPPING, EAVESDROPPING AND SURVEILLANCE

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INTRODUCTION

There are federal and state laws that may be applicable to the collection of evidence against a spouse in a divorce. A violation of these laws can lead to both civil and criminal consequences. Title III of the Omnibus Crime Control and Safe Streets Act of 1968 18 U.S.C.S. §§ 2510 et. seq., prohibits the interception and disclosure of wire, oral, or electronic communications. In 1986, Congress made amendments to Title III to maintain its applicability to advances in technology. Many states use Title III as the foundation for their own laws. Title III serves as a framework for Georgia's wiretapping, eavesdropping, and surveillance laws. O.C.G.A. §§ 16-11-60 et. seq.. In addition, to providing penalties for the wiretapping and eavesdropping, Georgia law prohibits the fraudulent use of a computer to obtain unauthorized information about others. O.C.G.A. §§ 16-9-90 et. seq.

GENERAL GUIDELINES

Evidence obtained in violation of an individual's privacy will not be admissible in a court of law. Privacy is "the condition or state of being free from public attention to intrusion into or interference with one's acts or decisions." Black's Law Dictionary Digital Edition 2006. Therefore, a conversation in a public place is not private and there is no reasonable expectation of privacy in a public place. However, there is an expectation of privacy for a conversation in a private place. Determining whether the law protects your privacy requires knowledge of the law and it is often a question of what society deems is reasonable.

HOW THE LAW AFFECTS YOUR ACTIONS

Telephone:

It is unlawful to record the phone conversations between your spouse and a third party. O.C.G.A. 16-11-62. This applies to cellular, landline, and cordless

telephone transmissions (*Barlow v. Barlow*). O.C.G.A. 16-11-62 does not prohibit a party to a telephone conversation from recording the conversation.

Oral Communication:

It is unlawful for a person in a clandestine manner to intentionally overhear, transmit, or record the private conversations of another, which originate in any private place O.C.G.A. § 16-11-61(1). It is unlawful to go on or about the premises of another or any private place for the purpose of invading the privacy of others by eavesdropping upon their conversations O.C.G.A. § 16-11-62(3). A private place is defined as, “a place where one is entitled reasonably to expect to be safe from casual or hostile intrusion or surveillance.” O.C.G.A. § 16-11-62(3).

Surveillance:

It is unlawful to go on or about the premises of another or any private place for the purpose of invading the privacy of others by secretly observing their activities. O.C.G.A. § 16-11-62(3). Not only does this section prevent snooping on another’s private property, but it also prevents the use of long-range telescopic camera lenses to look into a private place. The law protects the privacy of individuals when they are located in private places or a place where there is a reasonable expectation of privacy. Georgia Code does not prevent the use of surveillance cameras by property owners for security or crime prevention. O.C.G.A. § 16-11-62(2) (B). However, the use of security cameras must be reasonable and not in violation of an individual’s expectation of privacy. Therefore, the use of hidden cameras in a bedroom to catch a cheating spouse is prohibited and in addition, the evidence gathered will not be admissible in court.

Computer Files and E-Mail:

“Any person who uses a computer or computer network with the intention of examining any employment, medical, salary, credit, or any other financial or personal data relating to any other person with knowledge that such examination is without authority shall be guilty of the crime of computer invasion of privacy O.C.G.A. 16-9-93(c).” Therefore, if it is proven that an individual viewed information of another without permission then that individual will have committed an invasion of privacy. Georgia code defines “without authority” as “the use of a computer or computer network in a manner that exceeds any right or permission granted by the owner of the computer or computer network.” O.C.G.A. 16-9-92 (18).

GPS Automobile Tracking:

Placing a GPS device on an automobile allows an individual to track the movements of the automobile and ultimately the driver's movements. It can be argued that tracking the movements of a vehicle on public roads is not an invasion of privacy because there is not an expectation of privacy on public roads. It is legal to track a vehicle by following its movements with the use of another vehicle because there is no expectation of privacy. However, placing a GPS tracking device on a vehicle might be a trespass, which may make the evidence obtained from using the device inadmissible. If the party having the GPS placed on the vehicle is entitled to use and possess the vehicle, they are authorized to have a GPS placed on the vehicle. Otherwise, you should not place a GPS on a vehicle.

Private Investigator:

You cannot legally hire someone else to commit any of the prohibited acts described above. However, a private investigator can follow a suspected cheating spouse because there is not an expectation of privacy on public roads.

Admissibility of Evidence:

According to O.C.G.A. 16-11-67, "No evidence obtained in a manner which violates any of the provisions of this part shall be admissible in any court of this state except to prove violations of this part." This means that if you obtain evidence that is in violation of what is described above then it is not admissible. Furthermore, introduction of such evidence will serve as proof of a violation of Georgia law and could lead to criminal and/or civil sanctions.

POSSIBLE CONSEQUENCES

Attempting to use evidence obtained in violation of Georgia or Federal law can lead to civil or criminal penalties. Furthermore, sharing this evidence with others (e.g. friends, family) can lead to other civil liabilities (e.g. intentional infliction of emotional distress).