

## L. OFFENSES AGAINST THE RIGHT OF PRIVACY

### 799 EAVESDROPPING; DEFINITIONS OF TERMS

The following definitions are applicable to this article:

1. "Wiretapping" means the intentional overhearing or recording of a telephonic or telegraphic communication by a person other than a sender or receiver thereof, without the consent of either the sender or receiver, by means of any instrument, device or equipment. The normal operation of a telephone or telegraph corporation and the normal use of the services and facilities furnished by such corporation pursuant to its tariffs or necessary to protect the rights or property of said corporation shall not be deemed "wiretapping."
2. "Mechanical overhearing of a conversation" means the intentional overhearing or recording of a conversation or discussion, without the consent of at least one party thereto, by a person not present thereat, by means of any instrument, device or equipment.
3. "Telephonic communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of communications and such term includes any electronic storage of such communications.
4. "Aural transfer" means a transfer containing the human voice at any point between and including the point of origin and the point of reception.
5. "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photo-optical system, but does not include:
  - A. any telephonic or telegraphic communication; or
  - B. any communication made through a tone only paging device; or
  - C. any communication made through a tracking device consisting of an electronic or mechanical device which permits the tracking of the movement of a person or object; or
  - D. any communication that is disseminated by the sender through a

method of transmission that is configured so that such communication is readily accessible to the general public.

6. "Intercepting or accessing of an electronic communication" and "intentionally intercepted or accessed" mean the intentional acquiring, receiving, collecting, overhearing, or recording of an electronic communication, without the consent of the sender or intended receiver thereof, by means of any instrument, device or equipment, except when used by a telephone company in the ordinary course of its business or when necessary to protect the rights or property of such company.
7. "Electronic communication service" means any service which provides to users thereof the ability to send or receive wire or electronic communications.
8. "Unlawfully" means not specifically authorized pursuant to article seven hundred or seven hundred five of the criminal procedure law.

## **800 EAVESDROPPING**

A Native American is guilty of eavesdropping when he unlawfully engages in wiretapping, mechanical overhearing of a conversation, or intercepting or accessing of an electronic communication.

Eavesdropping is a class E felony.

## **801 POSSESSION OF EAVESDROPPING DEVICES**

A Native American is guilty of possession of eavesdropping devices when, under circumstances evincing an intent to use or to permit the same to be used in violation of section 800, he possesses any instrument, device or equipment designed for, adapted to or commonly used in wiretapping or mechanical overhearing of a conversation.

Possession of eavesdropping devices is a class A misdemeanor.

## **802 FAILURE TO REPORT WIRETAPPING**

A telephone or telegraph corporation is guilty of failure to report wiretapping when, having knowledge of the occurrence of unlawful wiretapping, it does not report such matter to an appropriate law enforcement officer or agency.

Failure to report wiretapping is a class B misdemeanor.

### **803 DIVULGING AN EAVESDROPPING WARRANT**

A Native American is guilty of divulging an eavesdropping warrant when, possessing information concerning the existence or content of an eavesdropping warrant issued pursuant to article seven hundred of the criminal procedure law, or concerning any circumstances attending an application for such a warrant, he discloses such information to another person; except that such disclosure is not criminal or unlawful when made to a state or federal agency specifically authorized by law to receive reports concerning eavesdropping warrants, or when made in a legal proceeding, or to a law enforcement officer or agency connected with the application for such warrant, or to a legislative committee or temporary state commission, or to the telephone or telegraph corporation whose facilities are involved, or to any entity operating an electronic communications service whose facilities are involved.

Divulging an eavesdropping warrant is a class A misdemeanor.

### **804 TAMPERING WITH PRIVATE COMMUNICATIONS**

A Native American is guilty of tampering with private communications when:

1. Knowing that he does not have the consent of the sender or receiver, he opens or reads a sealed letter or other sealed private communication; or
2. Knowing that a sealed letter or other sealed private communication has been opened or read in violation of subdivision one of this section, he divulges without the consent of the sender or receiver, the contents of such letter or communication, in whole or in part, or a resume of any portion of the contents thereof; or
3. Knowing that he does not have the consent of the sender or receiver, he obtains or attempts to obtain from an employee, officer or representative of a telephone or telegraph corporation, by connivance, deception, intimidation or in any other manner, information with respect to the contents or nature thereof of a telephonic or telegraphic communication; except that the provisions of this subdivision do not apply to a law enforcement officer who obtains information from a telephone or telegraph corporation pursuant to section 806; or
4. Knowing that he does not have the consent of the sender or receiver, and being an employee, officer or representative of a telephone or telegraph corporation, he knowingly divulges to another person the contents or nature thereof of a telephonic or telegraphic communication; except that the provisions of this subdivision do not apply to such person when he acts pursuant to section 806.

Tampering with private communications is a class B misdemeanor.

#### **805 UNLAWFULLY OBTAINING COMMUNICATIONS INFORMATION**

A Native American is guilty of unlawfully obtaining communications information when, knowing that he does not have the authorization of a telephone or telegraph corporation, he obtains or attempts to obtain, by deception, stealth or in any other manner, from such corporation or from any employee, officer or representative thereof:

1. Information concerning identification or location of any wires, cables, lines, terminals or other apparatus used in furnishing telephone or telegraph service; or
2. Information concerning a record of any communication passing over telephone or telegraph lines of any such corporation.

Unlawfully obtaining communications information is a class B misdemeanor.

#### **806 FAILING TO REPORT CRIMINAL COMMUNICATIONS**

1. It shall be the duty of a telephone or telegraph corporation, or an entity operating an electronic communications service, and of any employee, officer or representative thereof having knowledge that the facilities of such corporation or entity are being used to conduct any criminal business, traffic or transaction, to furnish or attempt to furnish to an appropriate law enforcement officer or agency all pertinent information within his possession relating to such matter, and to cooperate fully with any law enforcement officer or agency investigating such matter.
2. A Native American is guilty of failing to report criminal communications when he knowingly violates any duty prescribed in subdivision one of this section.

Failing to report criminal communications is a class B misdemeanor.

### **M. OFFENSES AGAINST PUBLIC SAFETY**

#### **807 DEFINITIONS**

As used in this Code, the following terms shall mean and include:

1. "Machine-gun" means a weapon of any description, irrespective of size, by whatever name known, loaded or unloaded, from which a number of shots or bullets may be rapidly or automatically discharged from a magazine with one continuous pull of the trigger and includes a sub-machine gun.