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Hawaii Statutory Code Citation:	Haw. Rev. Stat. §§ 711-1111	
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INTRODUCTION

Because the right to personal privacy is viewed as one of the most important rights available to Americans, most states have distinct laws regarding the use of audio and video recording equipment. Federal surveillance rules are provided under Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (“Title III”), as amended by Title I of the Electronic Communications Privacy Act of 1986 (“Title I”).¹ Federal law also prohibits video voyeurism.²

APPLICABILITY TO BYU–HAWAII

BYU–Hawaii must comply with federal and state laws when conducting video and audio surveillance on campus.

REQUIREMENTS

Video Surveillance

Federal Laws

Federal law prohibits videotaping the private areas of a person “under circumstances in which the individual has a reasonable expectation of privacy.”³ A person has a reasonable expectation of privacy in places in which a person “would believe that he or she could disrobe in privacy, without being concerned that an image of a private area of the individual was being captured”⁴ and in places in which a person “would believe that a private area of the individual would not be visible to the public.”⁵

Although federal law prohibits the interception of wire, oral, or electronic communication, multiple courts have concluded that this prohibition does not apply to silent video surveillance. In the Ninth Circuit Court of Appeals, which issues controlling decisions on federal law for Hawaii, the court ruled in *United States v. Taketa* that videotaping without aural interception does not violate federal law.⁶ The court later clarified in *United States v. Koyomeijan* that Title I neither prohibits nor regulates silent video surveillance.⁷

Notably, in 2003 the Eighth Circuit also found no congressional intent to regulate video surveillance under Title I and declared that “Title I neither regulates nor prohibits silent video surveillance.”⁸

State Law

¹ 18 U.S.C. § 2510 (2018).

² *Id.* § 1801(a).

³ *Id.*

⁴ *Id.* § 1801(b)(5)(A).

⁵ *Id.* § 1801(b)(5)(B).

⁶ *U.S. v. Taketa*, 923 F.2d 665, 675 (9th Cir. 1991).

⁷ *U.S. v. Koyomeijan*, 970 F.2d 536, 538-41 (9th Cir. 1992).

⁸ *U.S. v. Corona-Chavez*, 328 F.3d 974, 979-80 (8th Cir. 2003).



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Hawaii law prohibits the installation of a device in a private place used “for observing, recording, amplifying, or broadcasting sounds or events” without the consent of the persons entitled to privacy therein.⁹ Hawaii defines a “private place” as “a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance.”¹⁰ A private place “does not include a place to which the public or a substantial group of persons has access,” a school, or a place of business.¹¹ In 1984, the Supreme Court of Hawaii provided additional direction in *State v. Lee* when it agreed with a lower court that a doctor’s personal office was a private place.¹²

Audio Surveillance

Federal Laws

Federal law prohibits intercepting oral communications.¹³ This prohibition does not apply when the person making the recording is a party to the communication or when a party to the communication gives consent to be recorded.¹⁴ Consent can be express or implied.¹⁵ In *U.S. v. Rittweger*, a court found both implied and express consent when an employer sent memos to employees informing them that their telephone calls would be recorded, included a statement in the employee handbook that the company utilized recorded telephone lines, and required employees to sign a written statement acknowledging their telephone conversations would be recorded.¹⁶ However, it is important to note that an employee’s consent to be recorded in one aspect of employment cannot be construed as consent to be recorded in all activities at the workplace.¹⁷

State Law

Hawaii law prohibits the installation or use of any device used to hear or record any sounds that would not ordinarily be audible without the consent of at least one of the persons being recorded.¹⁸ In *State v. Lee*, the Hawaii Supreme Court confirmed that only one participant in a conversation is required to give consent under the state statute.¹⁹ Although some other states have laws requiring the consent of all parties to a phone call before it may be recorded, including nearby states California,²⁰ Nevada,²¹ and Washington,²² those state laws do not control operations at BYU–Hawaii.

Penalties

Federal Laws

⁹ Haw. Rev. Stat. § 711-1111(1)(d) (2019).

¹⁰ *Id.* § 711-1100.

¹¹ *Id.*

¹² 686 P.2d 816, 820 (Haw. Sup. Ct. 1984).

¹³ 18 U.S.C. § 2511(1)(a).

¹⁴ *Id.* § 2511(2)(a)(iii)(d).

¹⁵ *U.S. v. Van Poyck*, 77 F.3d 285, 292 (9th Cir. 1996).

¹⁶ 258 F. Supp. 2d 345, 354–45 (S.D.N.Y. 2003).

¹⁷ *See Anderson v. City of Columbus*, 374 F. Supp. 2d 1240, 1250–51 (M.D. Ga. 2005) (informing an employee that all telephone conversations would be recorded does not provide implied consent to record all workplace conversations).

¹⁸ Haw. Rev. Stat. § 711-1111(1)(e).

¹⁹ 686 P.2d at 818 (because an undercover police officer consented to recordings of a conversation in which he was a participant, those recordings were admissible).

²⁰ Cal. Penal Code § 632(a).

²¹ Nev. Rev. Stat. §§ 200.620, 48.077.

²² Wash. Rev. Code Ann. § 9.73.030(1)(a).



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Audio and Video Surveillance Laws

Any person found to have intercepted oral communication in violation of Titles I and III may be fined between \$1,000–\$10,000, imprisoned for no more than five years, or both.²³

State Law

Violation of Hawaii Revised Statute § 711-1111 is a violation of privacy in the second degree.²⁴ A violation of privacy is a misdemeanor,²⁵ which is punishable by imprisonment for no more than one year, a fine not to exceed \$2,000, or both.²⁶ Additionally, the court may order the destruction of any recording made during a violation of privacy.²⁷

STAYING UP-TO-DATE

The following websites provide valuable information regarding audio and visual surveillance.

DOCUMENT/REFERENCE	DESCRIPTION
<i>Public Video Surveillance: Is It An Effective Crime Prevention Tool?</i> – California Research Bureau (http://www.library.ca.gov/crb/97/05/)	A report examining whether or not the use of video surveillance deters criminal behavior

²³ 18 U.S.C. § 2511(4)(a); *see also id.* App. §§ 2h3.1(a)(1), 5E1.2(c)(3).

²⁴ Haw. Rev. Stat. § 711-1111(1).

²⁵ *Id.* § 711-1111(4).

²⁶ *Id.* §§ 706-663, 640.

²⁷ *Id.* § 711-1111(4).



APPENDIX I – State and Federal Video Surveillance Rules

WHAT STATUTES GOVERN VIDEO SURVEILLANCE?

FEDERAL

18 U.S.C. § 1801(a), “Whoever, in the special maritime and territorial jurisdiction of the United States, has the intent to capture an image of a private area of an individual without their consent, and knowingly does so under circumstances in which the individual has a reasonable expectation of privacy, shall be fined under this title or imprisoned not more than one year, or both.”

HAWAII

Haw. Rev. Stat. § 711-1111(1)(d), “(1) A person commits the offense of violation of privacy in the second degree if, except in the execution of a public duty or as authorized by law, the person intentionally:

[...] (d) Installs or uses, or both, in any private place, without consent of the person or persons entitled to privacy therein, any means or device for observing, recording, amplifying, or broadcasting sounds or events in that place, including another person in a stage of undress or sexual activity.”

Haw. Rev. Stat. § 711-1100, “‘Private place’ means a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance, but does not include a place to which the public or a substantial group thereof has access.”

WHAT APPLICABLE COURT CASES PROVIDE FURTHER GUIDANCE ON VIDEO SURVEILLANCE?

FEDERAL

Thompson v. Johnson Community College, 930 F. Supp. 501, 505 (D. Kan. 1996) (although video surveillance that also captures audio would be regulated by the federal wiretapping law, Title I is silent regarding video-only surveillance), *aff’d*, 108 F.3d 1388 (10th Cir. 1997).

United States v. Taketa, 923 F.2d 665, 675 (9th Cir. 1991) (videotaping without aural interception does not violate Title III).

United States v. Koyomeijan, 970 F.2d 536, 538-41 (9th Cir. 1992) (Title I neither prohibits nor regulates silent video surveillance).

United States v. Corona-Chavez, 328 F.3d 974, 979-80 (8th Cir. 2003) (found no congressional intent to regulate video surveillance under Title I; Title I neither regulates nor prohibits silent video surveillance).

HAWAII

State v. Lee, 686 P.2d 816, 820 (Haw. Sup. Ct. 1984) (an employee’s personal office should be considered a “private place”).

UNDER WHAT CIRCUMSTANCES IS VIDEO SURVEILLANCE PERMITTED?

FEDERAL

Video surveillance is permitted in places where there is no reasonable expectation of privacy.

HAWAII

Video surveillance is permitted as long as the surveillance is not conducted in a “private place.” An employee’s private office that is provided for their personal use at the workplace is considered a private place.



APPENDIX II – State and Federal Audio Surveillance Rules

WHAT STATUTES GOVERN AUDIO SURVEILLANCE?

FEDERAL

18 U.S.C. § 2511(1)(a), “(1) Except as otherwise specifically provided in this chapter [18 USCS §§ 2510 et seq.] any person who--

(a) intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication;

[...] shall be punished as provided in subsection (4) or shall be subject to suit as provided in subsection (5).”

18 U.S.C. § 2511(2)(d), “(d) It shall not be unlawful under this chapter [18 USCS §§ 2510 et seq.] for a person not acting under color of law to intercept a wire, oral, or electronic communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State.”

HAWAII

Haw. Rev. Stat. § 711-1111(1)(d-e), “(1) A person commits the offense of violation of privacy in the second degree if, except in the execution of a public duty or as authorized by law, the person intentionally:

[...] (d) Installs or uses, or both, in any private place, without consent of the person or persons entitled to privacy therein, any means or device for observing, recording, amplifying, or broadcasting sounds or events in that place, including another person in a stage of undress or sexual activity;

(e) Installs or uses outside a private place any device for hearing, recording, amplifying, or broadcasting sounds originating in that place which would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy therein.”

WHAT APPLICABLE COURT CASES PROVIDE FURTHER GUIDANCE ON AUDIO SURVEILLANCE?

FEDERAL

United States v. Rittweger, 258 F. Supp. 2d 345, 354-55 (S.D.N.Y. 2003) (notice by way of a memo, a document that all employees were required to sign, and publication in the employee handbook that all telephone conversations would be recorded were each independently sufficient to establish implied consent), *aff'd*, 524 F.3d 171 (2d Cir. 2008).

Anderson v. City of Columbus, 374 F. Supp. 2d 1240, 1250-51 (M.D. Ga. 2005) (informing an employee that all telephone conversations would be recorded does not provide implied consent to record all workplace conversations).

HAWAII

State v. Lee, 686 P.2d 816, 818 (Haw. Sup. Ct. 1984) (because an undercover police officer consented to recordings of a conversation in which he was a participant, those recordings were admissible).

UNDER WHAT CIRCUMSTANCES IS AUDIO SURVEILLANCE PERMITTED?

FEDERAL

Audio surveillance is permitted when at least one party has consented to such a recording. This consent may be implied, but employee consent to be recorded in one aspect of their employment cannot be construed as consent to be recorded in all activities at the workplace.

HAWAII

Audio surveillance is permitted when at least one party has consented to such a recording.