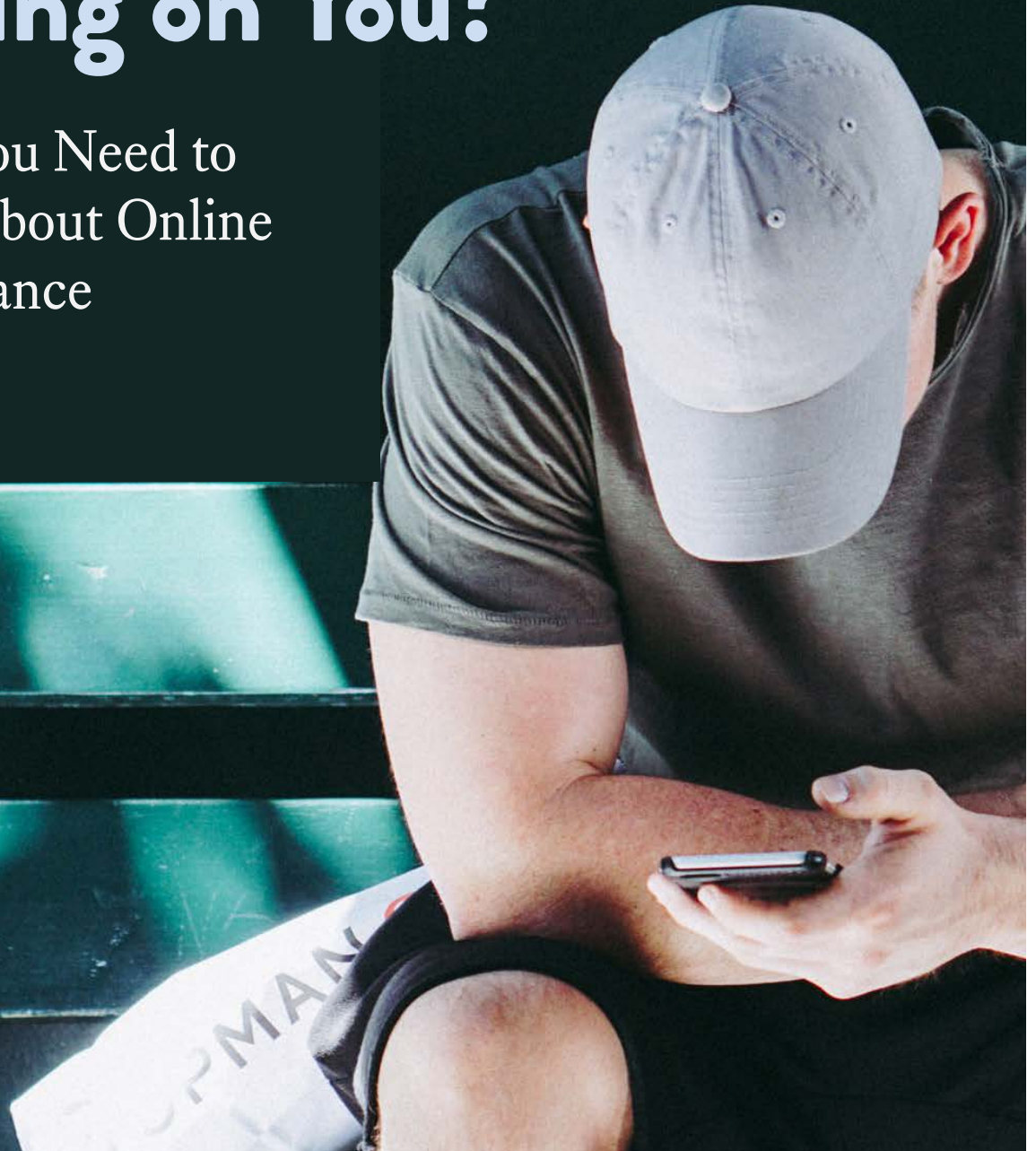


Is Your Spouse Spying on You?

What You Need to
Know About Online
Surveillance



THE LAW OFFICE OF
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No one wants to reach a point in their marriage where they feel suspicious and untrusting of their spouse. Unfortunately, however, more than a few marriages ultimately reach that point.

Perhaps you've been having difficulties as a couple for some time. Maybe one (or both) of you has engaged in activities, like cheating, that you shouldn't have. In these situations, it is not uncommon for a significant amount of mistrust, anger, and jealousy to spring up between the two of you.

Whatever the details of your particular circumstances, it is always a possibility that your spouse may be spying on you. Spouses may suspect one another of any number of things – having an affair, secret substance abuse, spending too much money. In those situations, some spouses turn to spying because they simply want vindication of their suspicions. Others may want to gather evidence to use in upcoming divorce proceedings. Still, others may want to use certain information to coerce the other spouse into doing what they want. Whatever the reason, spying happens often.

Certain methods of spying are illegal and in violation of both federal and North Carolina wiretapping laws

Because of advanced technology, spousal spying can include installing spyware on a computer or phone, placing hidden video cameras around the house, or even placing a GPS tracking device on a car. All of these methods can be implemented effortlessly, and often without the knowledge of the other person.

If you suspect that your spouse is attempting to spy on you, or, if you are thinking of spying on your spouse, you should contact an attorney immediately. You need to know that certain methods of spying are illegal and in violation of both federal and North Carolina wiretapping laws. Engaging in this sort of spying could expose you to serious liability, which is the last thing you need in the midst of already stressful divorce proceedings.

We're here to help because we realize the law can be confusing and difficult to understand. We've provided this guide to help you understand what is and what is not considered spying.



WHAT DOES THE LAW SAY ABOUT SPYING?

A good rule of thumb for determining whether your access is authorized or not, is to ask yourself whether the actions you're taking feel like an invasion of your spouse's privacy.

FEDERAL LAW

First, and most importantly, you should know that both federal as well as state laws of North Carolina prohibit spying on your spouse.

Federally, the Electronic Communications Privacy Act¹, or ECPA for short, makes it a crime to intercept or use either oral or wire communications with an electronic device, or to access electronic communication while in storage. What this means is that you cannot gain access to these types of communications without authorization from the party sending or receiving the information. The ECPA covers a variety of communications including emails, cell phone conversations, voice-over IP, webstreaming video, and more.

What you should know is that under the ECPA, it is illegal to wiretap and/or otherwise record telephone conversations that your spouse has without their consent, that it is illegal to install certain types of email spyware on your spouse's computer or other personal electronic device, and that it is illegal to "hack" into your spouse's email account without authorization. What does or does not constitute "authorization" can be a gray area, and one that is best explored with the advice of knowledgeable and experienced legal counsel. In general, a good rule of thumb for determining whether your access is authorized is to ask yourself whether the actions you're taking feel like an invasion of your spouse's privacy. If the answer is yes, it would be wise to avoid.

¹18 U.S.C. § 2510 et. al.

*Violations of the
aforementioned
federal and state
laws can result
in court ordered
injunctions, civil
damages, and/or
criminal penalties*

STATE LAW

The North Carolina Electronic Surveillance Act² provides much of the same information as the federal law just mentioned, and also prohibits interception of wire, oral, or electronic communications. North Carolina also has laws with respect to computer-related crimes, and under those laws, it is illegal to gain access to another person's computer, system, program, or network without authorization.

Anyone contemplating spousal spying should also be aware that North Carolina recognizes several privacy-based causes of action that are also applicable to these sorts of behaviors. One of those is known as "Intrusion upon Seclusion," which essentially means that invasion of privacy is recognized in North Carolina as grounds for a lawsuit. North Carolina also recognizes other causes of action that might apply depending on the details of the situation, and consultation with an attorney to better understand the details of those laws would be a wise course of action.

Ultimately, violations of the federal and state laws can result in court ordered injunctions, civil damages, and/or criminal penalties. As a result, it's best to think carefully about the behavior you want to engage in, and whether it would ultimately be worth it in the long run.

WHAT ABOUT THESE SPECIFIC ACTIVITIES? CAN I DO THIS OR THAT?

Knowing the law generally is helpful, but many people also want to know about specific activities. If you are contemplating any of the activities mentioned below, or if you believe your spouse may be spying on you in one of these ways, read on for additional information you may want to consider.

²N.C. Gen. Stat. § 14-458



*It is illegal to record
a conversation
without the
knowledge and
consent of at least
one party*

1. TAPE RECORDERS

Many people consider using tape recorders or voice-activated recorders to spy on their spouses. Some think it would be simple and easy to simply obtain a tape recorder, and place it in their spouse's car, or hidden in a room of the house without their knowledge. We would caution you to avoid doing this.

In North Carolina, it is illegal to record a conversation without the knowledge and consent of at least one party. Hiding a tape recorder in your spouse's car, bag, or even in your own home to try to capture evidence of an affair without your spouse's knowledge is illegal. If your spouse doesn't know that you're doing it, and you're trying to do it without your spouse finding out, the reality of the situation is that you shouldn't be. Making this type of recording is illegal.

Keep in mind, however, that you are completely within your legal rights to record conversations between your spouse and yourself, because you are a personal party to that conversation. If you are a victim of domestic violence, for example, having audio recording of your spouse engaging in abusive behavior can be extremely helpful to your case. The same can be said for child custody issues. If your spouse is intentionally causing difficulties during custody exchanges, or is being abusive to your children in any way, tape recorded evidence is of high value. (The caveat here, of course, is that no recording is anywhere near as valuable as your safety, and you should always leave a situation in immediately when you believe you or your children may be in danger.)

2. RECORDING PHONE CONVERSATIONS

In a nutshell, the rule with respect to recording phone conversations is that you are allowed to do so, but only if one of the parties to the conversation is aware that it is being recorded. If both parties are unaware, that would be illegal, and an ill-advised decision to make. One exception to the basic rule can sometimes be applicable if you are recording conversations between your spouse and your children. There are several North Carolina cases in which courts have found that it is within the bounds of the law to record your spouse and your children in your absence and without their knowledge, as long as you are concerned for the safety of your children. Thus, if you suspect abuse of some kind, tape recording conversations of this nature may be legal, though you may still have to defend and explain your actions in court with compelling evidence.

3. LOOKING AT THE CONTENTS OF MY SPOUSE'S CELL PHONE

Unless your spouse knows you have access to their phone and have used it in the past, you should avoid browsing the phone's contents

In general, if your spouse knows you have the passcode to their cell phone, and you use the phone from time to time, then there is no reasonable expectation of privacy in its contents. Therefore, if you are regularly allowed to use your spouse's phone, and discover that multiple phone calls and text messages have been made at odd hours to a number you don't recognize, this discovery is not considered to be illegal spying. On the other hand, if your spouse has never given you the password to their phone, and you just happen to correctly guess the password, or are able to obtain it without their knowledge, you do not have authorization to look through the phone. Unless your spouse knows you have access to their phone and have used it in the past, you should avoid browsing the phone's contents without their knowledge.

4. WHAT ABOUT E-MAIL?

Many of us use email as one of our primary forms of communication. We may even have more than one account, which can be accessed from wherever we are – on our phones, computers, or tablets. As a result, email is often one of the primary methods of communication where one spouse is most interested in spying on the other.

Spouses who are interested in uncovering evidence of inappropriate behavior may consider putting spyware on their partner’s computer. Some types of spyware send copies of incoming and outgoing emails to your own email address, while others track internet browsing, or even keystrokes made by the unsuspecting user. These sorts of programs are generally considered to be a violation of the ECPA, as they constitute unauthorized access to electronic communications.

Beyond uncovering information about your spouse while snooping on their computer, it’s possible, depending on your spouse’s occupation, that they may have confidential information about their clients stored. As a result, you are not only violating your spouse’s right to privacy, but that of other individuals as well, so while it may be tempting, it’s best to avoid this course of action. If you are not authorized to look through the computer, it’s simply best not to do so.

5. CAN I SNOOP THROUGH MY SPOUSE’S FACEBOOK ACCOUNT?

Without specific authorization, it is illegal and ill-advised to attempt to “hack into” your partner’s Facebook

The same information provided above with respect to email generally applies to Facebook and other social media sites. There are spyware programs that track and record chats, messages, and posts from social media, in addition to storing passwords without knowledge of the account owner. Again, this is considered unauthorized access and is illegal. If you are Facebook friends with your spouse, and you happen to see something that he or she posts that is intentionally made visible to other viewers, it is not illegal to screenshot or otherwise capture that content. Without specific authorization, however, it is illegal and ill-advised to attempt to hack into your partner’s Facebook or other social media accounts to obtain information.



6. CAN I PUT A GPS TRACKING DEVICE ON MY SPOUSE'S CAR?

Proceed with caution when considering tracking your spouse's car

This is somewhat of a gray area. The United States Supreme Court had initially made the determination that generally speaking, people traveling in vehicles have no reasonable expectation of privacy, and as a result, their location is not confidential. Recently, however, the courts have begun finding that the use of GPS trackers without knowledge and consent is considered trespass in certain situations. While there is no North Carolina precedent squarely addressing the issue in a family law case, it would be wise to proceed with caution when considering tracking your spouse in this way.

Of course, beyond the questions and scenarios posed above, there may be other areas with respect to which you are curious if the actions you are contemplating constitute spying. Generally, if you have such questions, it's likely that the activity you're contemplating may have some legal ramifications. As a result, it's always wise to contact your attorney before taking any action that might be questionable, or reflect poorly on you in your divorce proceedings.

WHAT OPTIONS DO I HAVE?

Understandably, many of our clients often ask: “If can’t use these methods to gather information on my spouse, what can I do?” Many people consult with an attorney in instances where they have suspicions that they are seeking to prove or disprove, and ultimately decide to hire a private investigator. Certainly, it is possible, through use of a private investigator to discover that a spouse who claims to be traveling for work each week is actually spending the time with another romantic interest. Or, it may be uncovered that a spouse is drinking far more than the other spouse is aware of, having an affair at work, or is using illegal substances. All of these things can be helpful to know and obtain proof of during divorce proceedings, but it is important to do so in a legally acceptable way. Hiring a private investigator under the advice and direction of experienced legal counsel is usually the best and safest way to do so.

In addition to hiring a private investigator, it can also be helpful to engage in the practice of journaling to document behaviors, patterns, and incidents. It can be as simple as writing down in a journal the day, date and time of a particular behavior, reaction, or event.

A pen and paper journal is one method or you can use an app on your smartphone and email the entries to yourself. You would maintain a cloud-based spreadsheet or document that you can share with your attorney. The important thing is not the format, but the regular detailed documentation of the behavior.

In addition to using these methods, there may be other ways of obtaining information in your particular case that will be successful and helpful, and also legal. The best way to ensure that this is the case is to consult with your attorney prior to taking any action.

CALL US TODAY

Facing difficulties in your marital relationship, particularly when you believe that deceptive or dishonest behavior may be involved can be overwhelming. The desire to obtain dirt on your spouse is understandable and normal. In certain situations, evidence of inappropriate behavior during the marriage can be helpful to your case during divorce proceedings, but it is of great importance that such evidence be gathered in a manner that complies with the law.

Remember that our team is here to help! We always want to reassure you that you are not alone in these proceedings. We welcome the opportunity to put our knowledge and experience to work for you so give us a call today.

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