

**CHAPTER 12.1-15**  
**DEFAMATION - INTERCEPTION OF COMMUNICATIONS**

**12.1-15-01. Criminal defamation.**

1. A person is guilty of a class A misdemeanor if he willfully publishes defamatory matter or knowingly procures such publication or in any way knowingly aids or assists in the same being done.
2. It is a defense to a prosecution under this section that:
  - a. The matter alleged to be defamatory is true; or
  - b. The matter alleged to be defamatory was contained in a privileged communication.
3. In this section:
  - a. "Defamatory matter" means any written or oral communication concerning a natural person made public with actual malice or with reckless disregard of the truth by any utterance, printing, writing, sign, picture, representation, or effigy tending to expose such person to public hatred, contempt, or ridicule or to deprive him of the benefits of public confidence and social intercourse or any written or oral communication concerning a natural person made public as aforesaid designed to blacken and vilify the memory of one who is dead and tending to scandalize or provoke his surviving relatives and friends.
  - b. "Privileged communication" means a communication made to a person entitled to or interested in the communication by one who is also entitled to or interested in or who stood in such relation to the former as to afford a reasonable ground for supposing his motive innocent.
  - c. "Publication" means a knowing display of defamatory matter, or the parting with its immediate custody under circumstances which exposed the defamatory matter to be read or seen or understood by a person other than the publisher of the defamatory matter, although it is not necessary that the matter complained of should have been seen or read by another.

**12.1-15-02. Interception of wire or oral communications - Eavesdropping.**

1. A person is guilty of a class C felony if he:
  - a. Intentionally intercepts any wire or oral communication by use of any electronic, mechanical, or other device; or
  - b. Intentionally discloses to any other person or intentionally uses the contents of any wire or oral communication, knowing that the information was obtained through the interception of a wire or oral communication.
2. A person is guilty of a class A misdemeanor if he secretly loiters about any building with intent to overhear discourse or conversation therein and to repeat or publish the same with intent to vex, annoy, or injure others.
3. It is a defense to a prosecution under subsection 1 that:
  - a. The actor was authorized by law to intercept, disclose, or use, as the case may be, the wire or oral communication.
  - b. The actor was (1) a person acting under color of law to intercept a wire or oral communication, and (2) he was a party to the communication or one of the parties to the communication had given prior consent to such interception.
  - c. (1) The actor was a party to the communication or one of the parties to the communication had given prior consent to such interception, and (2) such communication was not intercepted for the purpose of committing a crime or other unlawful harm.

**12.1-15-03. Traffic in intercepting devices.**

1. A person is guilty of a class C felony if, within this state, he manufactures, assembles, possesses, transports, or sells an electronic, mechanical, or other device, knowing that

- the design of such device renders it primarily useful to the purpose of the surreptitious interception of wire or oral communications.
2. A person is guilty of a class A misdemeanor if he places, in a newspaper, magazine, handbill, or other publication published in this state, an advertisement of an electronic, mechanical, or other device, knowing that the design of such device renders it primarily useful for surreptitious interception of wire or oral communications, or knowing that such advertisement promotes the use of such device for surreptitious interception of wire or oral communications.
  3. It is a defense to a prosecution under this section that the actor was:
    - a. An officer, agent, or employee of, or a person under contract with, a communications common carrier, acting within the normal course of the business of the communications common carrier; or
    - b. A public servant acting in the course of his official duties or a person acting within the scope of a government contract made by a person acting in the course of his official duties.

#### **12.1-15-04. Definitions.**

In sections 12.1-15-02 through 12.1-15-04:

1. "Communications common carrier" shall have the meaning prescribed for the term "common carrier" by section 8-07-01.
2. "Contents", when used with respect to any wire or oral communication, includes any information concerning the identity of the parties to such communication or the existence, substance, purport, or meaning of that communication.
3. "Electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire or oral communication other than:
  - a. Any telephone or telegraph instrument, equipment, or facility, or any component thereof, (1) furnished to the subscriber or user by a communications common carrier in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business; or (2) being used by a communications common carrier in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties.
  - b. A hearing aid or similar device being used to correct subnormal hearing to not better than normal.
4. "Intercept" means the aural acquisition of the contents of any wire or oral communication through the use of an electronic, mechanical, or other device, or by secretly overhearing the communication.
5. "Oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation.
6. "Wire communication" means any communication 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 furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of communications.

#### **12.1-15-05. Interception of correspondence.**

1. A person is guilty of a class A misdemeanor if, knowing that a letter, postal card, or other written private correspondence has not yet been delivered to the person to whom it is directed, and knowing that he does not have the consent of the sender or receiver of the correspondence, he:
  - a. Damages or destroys the correspondence with intent to prevent its delivery;
  - b. Opens or reads sealed correspondence with intent to discover its contents; or
  - c. Knowing that sealed correspondence has been opened or read in violation of subdivision b, intentionally divulges its contents, in whole or in part, or a summary of any portion thereof.

**12.1-15-06. Implanting microchips prohibited.**

A person may not require that an individual have inserted into that individual's body a microchip containing a radio frequency identification device. A violation of this section is a class A misdemeanor.