

# PROTECTED INNOCENCE INITIATIVE

STATE ACTION. NATIONAL CHANGE.

## Issue Brief

### SECTION 6.2

<b>Area of Law</b>	Criminal Justice Tools for Investigation and Prosecution
<b>The Policy Point</b>	Single party consent to audiotaping is permitted in law enforcement investigations.
<b>The Legislative Solution</b>	Recorded evidence collected through phone conversations is necessary to increase the number of successful prosecutions of domestic minor sex trafficking cases. This important tool can lead to actionable evidence while simultaneously providing protection to investigating officers by permitting them to record and broadcast their interactions with the criminals. States should enact laws that permit single party consent to audiotaping to facilitate the collection of evidence against persons who commercially sexually exploit children.

#### Select Statute Highlights

##### Kansas

Kansas allows single party consent to audiotaping, stating in Kan. Stat. Ann. § 21-6101(a)(1) (Breach of privacy) that a breach of privacy occurs when an individual “without the consent of the sender or receiver” intercepts the contents of a message sent via “telephone, telegraph, letter or other means of private communication.”

##### Oregon

Or. Rev. Stat. § 165.543(1) (Interception of communications) states, “Except as provided in ORS 133.724 [Application for ex parte order; evidence; required contents of order; reports] or as provided in ORS 165.540 (2)(a) [Obtaining whole or part of communication], any person who willfully intercepts, attempts to intercept or procures any other person to intercept or attempt to intercept any wire or oral communication where such person is not a party to the communication and where none of the parties to the communication has given prior consent to the interception, is guilty of a Class A misdemeanor.”

##### South Carolina

S.C. Code Ann. § 17-30-30(B) (Interception by employee of Federal Communications Commission, by person acting under color or

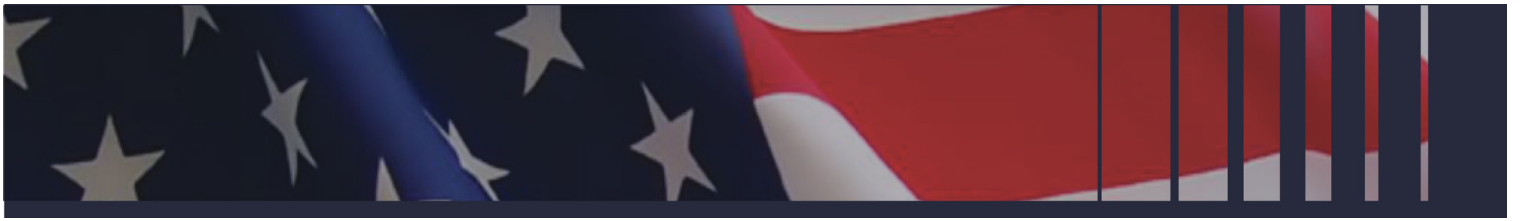
law, and where party has given prior consent) permits single party consent to audiotaping. S.C. Code Ann. § 17-30-30(B) states, “It is lawful under this chapter for a person acting under color of law to intercept a wire, oral, or electronic communication, where the person is a party to the communication or one of the parties to the communication has prior consent to the interception.” Subsection (C) states, “It is lawful under this chapter for a person not acting under color of law to intercept a wire, oral, or electronic communication where the person is a party to the communication or where one of the parties to the communication has given prior consent to the interception.”

##### South Dakota

South Dakota allows single party consent to audiotaping. Pursuant to S.D. Codified Laws § 23A-35A-20(1) (Unlawful interception—telephone or telegraph—consent), an individual who is “[n]ot a sender or receiver of a telephone or telegraph communication, intentionally and by means of an eavesdropping device overhears or records a telephone or telegraph communication, or aids, authorizes, employs, procures, or permits another to so do, without the consent of either a sender or receiver thereof” is guilty of a felony.

##### Texas

Tex. Penal Code Ann. § 16.02(c)(3),(4) states, “(c) It is an affirmative defense to prosecution under Subsection (b) [Unlawful interception, use or disclosure of wire, oral, or electronic



communications] that: . . . (3) a person acting under color of law intercepts:(A) a wire, oral, or electronic communication, if the person is a party to the communication or if one of the parties to the communication has given prior consent to the interception;. . .(4) a person not acting under color of law intercepts a wire, oral, or electronic communication, if:(A) the person is a party to the communication; or(B) one of the parties to the communication has given prior consent to the interception, unless the communication is intercepted for the purpose of committing an unlawful act;. . .”

Issues Briefs are derived from the 40 legal components contained in the Protected Innocence Legislative Framework, an analysis of state laws performed by the American Center for Law & Justice and Shared Hope International, under the Protected Innocence Initiative. This initiative is designed to set a national standard of protection against domestic minor sex trafficking.

To access the Protected Innocence Legislative Framework Methodology, and Report Cards, foundational analysis and recommendations for each state, please visit: [www.sharedhope.org/reportcards.aspx](http://www.sharedhope.org/reportcards.aspx).

