

ISSUE BRIEF

COMPONENT 6.2

Area of Law	Criminal Justice Tools for Investigation and Prosecution
The Policy Goal	Single party consent to audiotaping is permitted in law enforcement investigations.
The Reason	Audiotaping is an important tool for law enforcement. This 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. Recorded evidence collected through phone conversations is necessary to increase the number of successful prosecutions of domestic minor sex trafficking cases.

Examples of Legislative Solutions

Kansas

Kansas allows single party consent to audiotaping, stating 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.” Kan. Stat. Ann. § 21-6101(a)(1) (Breach of privacy).

Oregon

Or. Rev. Stat. § 165.543(1) (Interception of communications) permits single party consent to audiotaping, stating, “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 communication who intentionally and by means of an eavesdropping device overhears or records a communication, or aids, authorizes, employs, procures, or permits another to overhear or record, without the consent of either a sender or receiver of the communication” is guilty of a felony.