

ISSUE BRIEF

COMPONENT 6.3

Area of Law	Criminal Justice Tools for Investigation and Prosecution
The Policy Goal	Wiretapping is an available tool to investigate domestic minor sex trafficking and commercial sexual exploitation of children (CSEC).
The Reason	A serious challenge in any prosecution of domestic minor sex trafficking is producing corroborating evidence at trial. Recorded phone conversations or text messages between a victim and a buyer or trafficker are important incriminating pieces of evidence. Wiretapping is largely permitted in cases of murder, arson, and terrorism and often in other serious felonies involving danger to life or limb. Child sex trafficking and CSEC should be recognized as serious crimes involving these dangers to a child, therefore necessitating wiretapping as an investigative tool. States should carve out an exemption for investigations of sex trafficking and CSEC cases in their wiretapping laws to allow law enforcement officers to investigate and obtain evidence to substantiate their cases against buyers and traffickers while protecting victims who have a difficult time testifying. This investigative tool will lead to an increase in arrests and better prosecutions and will help to alleviate reliance on the child victim-witness' testimony.

Examples of Legislative Solutions

Delaware

Under Del. Code Ann. tit. 11, § 2402(c)(3) (Interception of communications generally; divulging contents of communication, violations of chapter), “[i]t is lawful . . . [f]or an investigative or law-enforcement officer acting in a criminal investigation or any other person acting at the prior direction and under the supervision of an investigative or law-enforcement officer in such investigation pursuant to a court order . . . to intercept a wire, oral or electronic communication in order to provide evidence of the commission of . . . human trafficking . . .” Additionally, Del. Code Ann. tit. 11, § 2405 (Authorities permitted to apply for order authorizing interception) states, “The Attorney General, Chief Deputy Attorney General, State Prosecutor or Chief Prosecutor of any county may apply to a judge authorized to receive intercept applications and the judge, in accordance with § 2407 of this title, may grant an order authorizing the interception by investigative or law-enforcement officers of wire, oral or electronic communications when the interception may provide evidence: (1) Of the commission of the offense of racketeering . . . human trafficking . . . ; (2) Of the commission of any felony creating a risk of physical injury to a person; (3) Of a conspiracy or solicitation to commit any of the offenses set forth in paragraph (1) or (2) of this section; or (4) Aiding in the apprehension of the perpetrator of any of the offenses set forth in this section.”

Florida

Fla. Stat. Ann. § 934.07(1)(a) (Authorization for interception of wire, oral, or electronic communications) provides that certain specified persons “may authorize an application to a judge of competent jurisdiction for, and such judge may grant in conformity with ss. 934.03–934.09 an order authorizing or approving the interception of, wire, oral, or electronic communications” by law enforcement for the purpose of investigating the commission of certain crimes, including “any violation of s. 787.06 [Human trafficking] . . . any violation of chapter 895 [Offenses concerning racketeering and illegal debts]; any violation of chapter 896 [Offenses related to financial transactions]; any violation of chapter 815 [Computer-related crimes]; any violation of chapter 847 [Obscenity]; any violation of s. 827.071 [Sexual performance by a child; penalties]; . . . or any conspiracy or solicitation to commit any violation of the laws of this state relating to the crimes specifically enumerated in this paragraph.”

Illinois

Ill. Comp. Stat. Ann. § 725 ILCS 5/108B-3(a) (Authorization for the interception of private communications) authorizes the State’s Attorney to apply to a judge for an order to intercept “a private communication when no party has consented to the interception . . . [if] the interception may provide evidence of, or may assist in the apprehension of a person who has committed, is committing or is about to commit, a violation of”

involuntary servitude, involuntary sexual servitude of a minor, trafficking in persons, promoting juvenile prostitution, soliciting for a minor engaged in prostitution, keeping a place of juvenile prostitution, patronizing a minor engaged in prostitution, juvenile pimping and aggravated juvenile pimping.

Louisiana

La. Rev. Stat. Ann. § 15:1308(A)(2)(q), (r), (s) (Authorization for interception of wire or oral communications) states, “The attorney general, or the deputy or any assistant attorney general acting pursuant to the authorization of the attorney general, with the approval of the district attorney or any assistant district attorney acting pursuant to the written authorization of the district attorney in whose district the interception of wire, electronic, or oral communications shall take place, and the district attorney or authorized assistant district attorney, with the approval of the attorney general or authorized deputy or assistant attorney general may authorize an application to a judge in whose district the interception of wire, electronic, or oral communications shall take place, and such judge may grant in conformity with R.S. 15:1310 an order authorizing or approving the interception of wire, electronic, or oral communications by an investigative or law enforcement officer having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of . . . [t]he commission, attempted commission, or conspiracy to commit a crime involving any of the following offenses . . . [h]uman trafficking when prosecuted under R.S. 14:46.2(B)(3) . . . , [t]rafficking of children for sexual purposes as defined by R.S. 14:46.3, [and] [c]ommercial sexual exploitation of children including R.S. 14:81.1 [Pornography involving juveniles], 81.3 [Computer-aided solicitation of a minor], 82 [Prostitution; definition; penalties; enhancement], 82.1 Prostitution; persons under eighteen; additional offenses], 82.2 [Purchase of commercial sexual activity; penalties], 83 [Soliciting for prostitutes], 83.1 [Inciting prostitution], 83.2 [Promoting prostitution], 83.3 [Prostitution by massage], 83.4 [Massage; sexual conduct prohibited], 84 [Pandering], 85 [Letting premises for prostitution], 86 [Enticing persons into prostitution], 89.2 [Crime against nature by solicitation], 104 [Keeping a disorderly place], 105 [Letting a disorderly place], and 282 [Operation of places of prostitution prohibited; penalty].”

Maryland

Md. Code Ann., Cts. & Jud. Proc. § 10-402(c)(2) (Wiretapping—unlawful interception of communications) provides in part, “(ii) It is lawful under this subtitle for an investigative or law enforcement officer acting in a criminal investigation or any other person acting at the prior direction and under the

supervision of an investigative or law enforcement officer to intercept a wire, oral, or electronic communication in order to provide evidence: 1. Of the commission of: . . . O. A Human trafficking offense under § 11-303 of the Criminal Law Article; P. Sexual solicitation of a minor under § 3-324 of the Criminal Law Article; . . . R. Sexual abuse of a minor under § 3-602 of the Criminal Law Article.”

Pennsylvania

18 Pa. Cons. Stat. § 5708(1), (2) (Order authorizing interception of wire, electronic or oral communications) permits certain law enforcement officers to make a written application for “an order authorizing the interception of a wire, electronic or oral communication by the investigative or law enforcement officers or agency having responsibility for an investigation involving suspected criminal activities when such interception may provide evidence of the commission of any of the following offenses, or may provide evidence aiding in the apprehension of the perpetrator or perpetrators of any of the following offenses,” which includes 18 Pa. Cons. Stat. § 911 (Corrupt organizations), § 3011 (Trafficking in individuals), § 5902 (Prostitution and related offenses) (“where such offense is dangerous to life, limb or property and punishable by imprisonment for more than one year”), and § 6318 (Unlawful contact with minor).

Texas

Tex. Code Crim. Proc. art. 18.20 § 4 (Bases for an application for a court order to intercept wire communications) provides, “A judge of competent jurisdiction may issue an interception order only if the prosecutor applying for the order shows probable cause to believe that the interception will provide evidence of the commission of . . . (2) an offense under any of the following provisions of the Penal Code: . . . (E) Chapter 20A [Trafficking of persons]; . . . (H) Section 43.04 [Aggravated promotion of prostitution]; (I) Section 43.05 [Compelling prostitution]; or (J) Section 43.26 [Possession or promotion of child pornography]; or (3) an attempt, conspiracy, or solicitation to commit an offense listed in Subdivision (1) or (2)”

Wisconsin

Wis. Stat. § 968.28 (Application for court order to intercept communications) states, “The attorney general together with the district attorney of any county may approve a request of an investigative or law enforcement officer to apply to the chief judge of the judicial administrative district for the county where the interception is to take place for an order authorizing or approving the interception of wire, electronic or oral communications. The chief judge may under s. 968.30

grant an order authorizing or approving the interception of wire, electronic or oral communications by investigative or law enforcement officers having responsibility for the investigation of the offense for which the application is made. The authorization shall be permitted only if the interception may provide or has provided evidence of the commission of the offense of homicide, felony murder, kidnapping, commercial gambling, bribery, extortion, dealing in controlled substances or controlled substance analogs, a computer crime that is a felony under s. 943.70, sexual exploitation of a child under s. 948.05, trafficking of a child under s. 948.051, child enticement under s. 948.07, use of a computer to facilitate a child sex crime under s. 948.075, or soliciting a child for prostitution under s. 948.08, or any conspiracy to commit any of the foregoing offenses.”