



# AEQUITAS

## What is the benefit of using a wiretap in a human trafficking investigation?<sup>1</sup>

A wiretap may allow investigators to obtain critical evidence of criminal wrongdoing without making the target of their investigation aware that they are being listened to. In human trafficking investigations, this may allow officers to identify additional victims or criminal conspirators, and to obtain evidence when all other investigative leads have been exhausted.

## What are the legal requirements for obtaining a wiretap?

- Probable cause to believe that the subject is committing, or is about to commit, an eligible offense,<sup>2</sup> typically human trafficking or financial crimes;
- Probable cause to believe that communications concerning that offense will be obtained through interception;
- Testimony or sworn affidavit that investigative procedures have been tried and failed or would be unlikely to succeed if tried, including, but not limited to:
  - Interviewing victims and informants;
  - Conducting undercover operations;
  - Physical surveillance;
  - Running vehicle or criminal history checks;
  - Using GPS warrants;
  - Obtaining a pen register warrant;
  - Reviewing closed cases involving the same individuals; and
  - Monitoring jail calls.
- A plan for minimization, to ensure that the intrusion on the subject is not “unreasonable under the circumstances.”<sup>3</sup>

## What is a Wiretap?

A wiretap may intercept a wide array of real-time communications, including phone calls (whether they be over landlines, cell phones, or Voice Over Internet Phone (“VOIP”) apps like WhatsApp or Facetime), text messages, and social media communications through applications such as Facebook Messenger or Instagram.

<sup>1</sup> For more information about wiretaps, see: Jennifer Dolle and Jennifer Newman, *Utilizing Eavesdropping Warrants to Successfully Investigate and Prosecute Sex Traffickers*, 25, STRATEGIES: THE PROSECUTORS NEWSLETTER, (2025), <https://aequitasresource.org/wp-content/uploads/2025/04/Wiretapping-Corrected-Article.pdf>; and see: Webinar by Jennifer Dolle and Sgt. Nick Odenath, *Tapping into Offender Accountability: Using Wiretapping in State-Level Human Trafficking Cases*, AEQUITAS, [https://www.youtube.com/watch?v=qy0F\\_mM5CQg](https://www.youtube.com/watch?v=qy0F_mM5CQg) (April 11, 2023).

<sup>2</sup> Not all crimes are eligible for eavesdropping warrants. The wire application must establish probable cause that the subject is committing an eligible crime. Prosecutors should consult the relevant statutes in their jurisdiction to determine what sex trafficking-related crimes are designated as eligible. Designated federal crimes are laid out in 18 U.S.C. §2516(1) and (3) and include offenses such as 18 U.S.C. §1591 (sex trafficking) and 18 U.S.C. § 2421 and § 2422 (related to transportation for illegal sexual activity and related crimes).

<sup>3</sup> *United States v. Apodaca*, 820 F.2d 348 (10th Cir. 1987) (holding that the proper approach for evaluating compliance with the minimization requirement is to objectively to assess the agent's or officer's actions in light of the facts and circumstances confronting him at the time without regard to his underlying intent or motive).

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### What factors should you consider when deciding whether to use a wiretap in a human trafficking investigation?

- The size of the organization;
- The level of violence in the known criminal activity;
- The impact prosecution will have on the community;
- The impact of a wiretap on building trust and rapport with victims once the existence of the wire is revealed to potentially testifying victims;
- Procedures to determine when a wiretap may need to be revealed due to information about an imminent threat to a victim or public safety;<sup>4</sup>
- Resources of the jurisdiction, including law enforcement partners, monetary resources, existing equipment, and other related logistical elements;
- What charges the prosecutor's office might be able to file without obtaining a warrant for a wiretap; and
- The capacity of the office to catalog and review discovery associated with a wiretap and organize it for sharing with the defense.

### What is NOT needed for a wiretap warrant to be granted?

- Investigators must have exhausted normal investigative procedures to obtain a wiretap warrant. However, officers can obtain a warrant when:
  - The size and scope of the criminal conspiracy is not fully known;<sup>5</sup>
  - Investigators are still identifying additional criminal actors within the conspiracy; or
  - There is identified evidence that meets the elements of the offense, but officers wish to obtain additional corroborating evidence within reason to ensure they have identified the full scope of criminal wrongdoing.
- While investigators must minimize the intrusion of a wiretap by developing and maintaining a plan to stop listening if they are eavesdropping upon conversations that are not criminal in nature, it is appropriate for them to continue to listen if the wiretap yields evidence of crimes not explicitly covered by the wiretapping warrant.<sup>6</sup>

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<sup>4</sup> For a more in-depth discussion of conditions under which investigators might deem it appropriate to intervene to protect the safety of a victim and/or the public, and how they might do so without jeopardizing the wire when possible, see: Dolle and Newman, *supra* note 1.

<sup>5</sup> *United States v. Milliner*, 765 F.3d 836 (8th Cir. 2014)

<sup>6</sup> *United States v. Couser*, 732 F.2d 1207 (4th Cir. 1984) (holding that the admissibility of discovery of nontargeted offenses not named in the warrant for the wiretap is to be analyzed under the “plain view” doctrine).

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### How might wiretaps negatively impact victims in Human Trafficking Cases?

Loss of trust in law enforcement and investigative agents.

May feel that the use of the wiretap breached their privacy.

Victims may fear they are the investigative targets of the wiretap, or fear criminal prosecution as a result of evidence uncovered on the wiretap.

### How can law enforcement use a trauma-informed approach to overcome these challenges?

Work with victim and social services to help rebuild trust.

Communicate with victims about why the wiretap was sought and emphasize that the purpose was to build a strong case against the trafficker and corroborate the victim's testimony.

Emphasize that the wiretap's ultimate goal is to lessen the burden on victims during the trial process.

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