



Hi all,

For some reason we are having a rash of states who have asked about the use of surveillance cameras in shelter. It has long been a tradition to use them on the outside of shelters as a security measure and there hasn't really been a problem with that as video in public places (the outside) is generally considered allowable as people have no expectation of privacy in public.

However, cameras INSIDE the shelter are a completely different issue. NNEDV has a cross team group of staff prepping to publish something polished and approved but in the meantime I wanted to drop a few notes for you here about why this is a bad idea and should likely be avoided.

1) States vary in laws regarding how you have to notify (or not) someone that they are part of any recording. Some states will say as long as one party knows ok, some will say every person in the recording has to be notified. In some cases this will mean anytime the persons in the recordings change everyone has to receive new notification. Imagine every time someone comes in or out of a room having to provide recording notification to all parties. It will be impossible to maintain.

2) I was involved in a court case where we were told recordings, which are documentation of your client's participation in services, are part of the client record. Therefore they may be subject to all the same rules you have for document retention for client files. If your state funding rules say you must keep client records seven years, without a specific exception, you may well be required to keep all video of clients for 7 years. Even if we encourage programs to make up different rules, they may not be allowed to. State governments may impose and interpret rules in different ways.

3) Doesn't happen often, but occasionally a lawyer visits a client in shelter. If you forget to stop the video you may shatter their attorney/client privilege. Advocates would have to remember these new and specific rules and create a whole new layer of precautions for them.

4) From the DOJ website about child pornography; <https://www.justice.gov/criminal-ceos/citizens-guide-us-federal-law-child-pornography>

Section 2256 of Title 18, United States Code, defines child pornography as any visual depiction of sexually explicit conduct involving a minor (someone under 18 years of age). Visual depictions include photographs, videos, digital or computer generated images indistinguishable from an actual minor, and images created, adapted, or modified, but appear to depict an identifiable, actual minor. Undeveloped film, undeveloped videotape, and

electronically stored data that can be converted into a visual image of child pornography are also deemed illegal visual depictions under federal law.

Notably, the legal definition of sexually explicit conduct does not require that an image depict a child engaging in sexual activity. A picture of a naked child may constitute illegal child pornography if it is sufficiently sexually suggestive.

So if a naked kid is running around in the shelter and you capture it on tape you may now be in possession of child pornography.

5) Having the video does not vacate any confidentiality mandates programs are subject to in federal law. There are no exceptions for reporting crime and you cannot give away the recording to officials without the permission of all survivors in the video. Any record you release about a survivor should be scrubbed of references to other survivors. It's nearly impossible to do this with video.

6) Last but not least, imagine offenders realize there are recordings of activities in programs and attempt to subpoena all the film as it relates to their children. Sure, theoretically federal law prohibits this, but we have all seen Judges override these laws, especially where a non-custodial parent wants records they claim refer to their child. This can open multiple opportunities for significant harm to survivors.

In summary, advocates rarely have enough time to do the work they already have, let alone create a new layer relative to videotaping in shelter. It encourages mission drift from advocacy into policing and creates a number of legal quagmires that could be dangerous to survivors and programs. The potential to create harm seems to far outweigh the benefits.

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