

## Is It Legal To Videotape Child Protective Service Workers Doing In-Home Visits?

Videotaping a CPS worker taking pictures of a child may depend on several factors.

By **Daniel Pollack** | March 31, 2021 at 11:45 AM



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To defend themselves from a false or mistaken allegation of abuse or neglect, do parents or guardians have a constitutional right to videotape a child protection services (CPS) worker during an in-home visit? There is sparse case law. By analogy, while the United States Supreme Court has not definitively addressed the

issue, federal appellate courts in the First, Third, Fifth, Seventh, Ninth, and Eleventh Circuits have explicitly upheld the right of a private citizen to record video and audio of police carrying out their official duties in a public place. The principal limitation on this right is that one may not hinder the officer in the performance of their duty. Accordingly, the Seventh Circuit held: “Nothing we have said here immunizes behavior that obstructs or interferes with effective law enforcement or the protection of public safety.”

Indeed, law enforcement officials have increasingly mandated the use of body worn cameras to provide documentation of critical encounters. Such recordings have also been an important tool for collecting evidence and building trust.

#### **Fourth Amendment Issues**

In Clark v. Stone (2020), the United States District Court for the Western District of Kentucky, addressed Fourth Amendment concerns involving a social worker making an in-home child protection visit:

“The Fourth Amendment protects against unreasonable searches and seizures. U.S.CONST. amend IV. The Supreme Court has noted that "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed . . . ." United States v. United States Dist. Ct., 407 U.S. 297, 313, 92 S. Ct. 2125, 32 L. Ed. 2d 752 (1972). That being the case, "searches and seizures inside a home without a warrant are presumptively unreasonable[.]" Groh v. Ramirez, 540 U.S. 551, 559, 124 S. Ct. 1284, 157 L. Ed. 2d 1068 (2004). Thus, a warrantless search or seizure inside a home by a law enforcement officer violates the Fourth Amendment unless an exception to the warrant requirement applies. See Brigham City v. Stuart, 547 U.S. 398, 403, 126 S. Ct. 1943, 164 L. Ed. 2d 650 (2006). In 2012, the Sixth Circuit conclusively stated that a "social worker, like other state officers, is governed by the Fourth Amendment's warrant requirement." Andrew v. Hickman Cnty., 700 F.3d 845, 859 (6th Cir. 2012). That being the case, the court

explained that social workers "would have to obtain consent, have sufficient grounds to believe that exigent circumstances exist, or qualify under another recognized exception to the warrant requirement before engaging in warrantless entries and searches of homes." *Id.* at 859-60. The *Andrews* court also noted, however, that many contours of the right were not clearly established. *Id.* at 862. For example, the next year, the Sixth Circuit refused to extend "clearly established" status to the Fourth Amendment right not to have a social worker enter a home without a warrant. *Kovacik v. Cuyahoga Cnty. Dep't of Children and Family Servs.*, 724 F.3d 687, 699 (6th Cir. 2013)."

### **CPS tasks during an in-home visit**

The state has a legitimate interest in protecting children from abuse or neglect. From a legal, policy, and practice perspective, child abuse and neglect investigations are complex. To ensure child safety, during an in-home visit, CPS investigators must gather a lot of information before determining whether a child is, in fact, at risk. Among others, five major tasks they do are:

1. Talking with the parent or guardian of the child
2. Inspecting the subject's home
3. Taking pictures of the child's living environment
4. Talking with the child who may be being abused
5. Taking pictures of the child

First, of the aforementioned, there should seemingly be no legal bar to videotaping the CPS worker while the first three tasks are being done. Second, there could be legal problems if the parent or guardians tries to videotape the CPS worker while the child is being interviewed. In its *Child Protective Services: A Guide for*

*Caseworkers*, the U.S. Department of Health and Human Services, Administration for Children and Families, [directs](#) that:

“All family members should be interviewed alone to establish rapport and a climate of trust and openness with the caseworker, which is designed to increase the accuracy of the information gathered. A benefit noted across professional boundaries regarding the use of individual interviewing protocols is that it enables the caseworker to utilize information gathered from one interview to assist in the next interview (p. 51).”

Third, videotaping the CPS worker taking pictures of the child may depend on several factors: the age and maturity of the child, the site on the body of the child that is being videotaped, and the desire of the child.

Attorney Jennifer Freeman notes: “It’s imperative to know your rights when Child Protective Services comes knocking at your door. In most circumstances, prohibiting parents or guardians from openly videotaping the work of Child Protective Services is like tying one hand behind their back. It strips them of a key tool of creating some semblance of order, even-handedness and fairness at a time often highly charged and frightening for families. It allows a record to be created that can be critical later. Nonetheless, Child Protective Services has a right to interview a child privately, and some states may limit non-consensual recording, so the right to videotape is not unlimited. Care must be taken to balance the rights of all parties and to know your state law.”

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