

Use of Surveillance Cameras INSIDE Shelters Run by SDVAs

Across the U.S., there has been an increase in the use of video camera surveillance. Individuals are using these in their homes or just outside of the home to deter crime or monitor their homes while away. As with any technology, there are empowering uses and risks.

Recently, the National Network to End Domestic Violence (NNEDV), a partner and technical assistance provider for the Action Alliance, notified us that they have been receiving requests for information about the use of surveillance cameras inside shelter spaces. We have created some rough guidance for you based on Virginia-specific laws (where applicable) and the experiences of Action Alliance staff to help you determine if this is the right path for your agency to take.

While outside cameras are usually used with no issue because people do not have a reasonable expectation of privacy in public spaces, using cameras inside shelters is completely different.

Our professional commitment to privacy and survivor control over their own information (how it is collected, maintained, and shared) is paramount. It is never advisable to audio or video record a survivor without his or her consent. A person's recorded image could be considered personally identifying information and subject to federal VAWA and state protections.

In general, the Action Alliance **DOES NOT recommend** use of surveillance cameras inside of shelters for the following reasons:

1. Virginia is a one-party consent state for audio recordings. In other words, as long as one party to the conversation knows the conversation is being recorded, it is lawful to record. Video (only video, not video with audio) recordings are treated differently in Virginia. Virginia only criminalizes video recordings of adults when the person is unknowingly captured in a state of undress and where that person had a reasonable expectation of privacy.¹ For example, if a person were to place a video camera in a bathroom in their home, and if they were to capture a video image of an unknowing, nonconsenting person's genitals, this would be a criminal violation. However, in Virginia, it is not unlawful to video record someone in an area where they do not have a reasonable expectation of privacy, such as a public sidewalk or parking lot. It is arguable that this protection extends to places within a private residence where a person could not be said to have a reasonable expectation of privacy, too, such as a kitchen or living room that is shared by multiple people.
2. 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

¹ Child pornography laws are different, and outside the scope of this discussion.

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 is recorded on video, the shelter may now be in possession of child pornography under this code.

The benefit of camera surveillance in a shelter is likely not outweighed by the risk of inadvertently capturing video of children that may violate federal child pornography laws.

3. Video footage might also become a tool for an abuser, for example, an abuser seeking to prove that taking children to a shelter was not acting in their best interest during a custody case. What if an abuser were to find out about video footage and tried to subpoena video of their children in the shelter? What if a judge decides this is ok? This could be harmful to survivors and your agency does not want to be in this position.

If you have surveillance cameras in your shelter, please consider the following:

1. Just because a video has been recorded does not mean it can be shared without adhering to all confidentiality mandates in federal law (e.g. VAWA, FVPSA). For instance, if evidence of a crime was captured on video, the agency would still need the permission of all survivors on the video to turn it over to law enforcement and any recording you are required to hand over would need to be scrubbed of all other individuals. Not only is it difficult/nearly impossible to scrub videos, it may also not be allowed due to evidentiary issues. If the video is tampered with, even if to only remove parts of the video that don't include the client, this act could affect the quality of the evidence and possibly hurt the survivor.
2. Some funders, including state administrators of federal funds, have become very strict in recent years on what [constitutes a client record and how those records should be maintained](#). Any video surveillance may qualify as part of that record as "personally-identifying information."
3. If an attorney visits a client in the shelter, your recording could shatter their attorney/client privilege. It is imperative that cameras be **turned off during the visit**. You absolutely would not want to be the reason that attorney/client privilege was compromised.

There are a lot of complicating factors when it comes to video in shelters that will add to your workload and potentially put your agency and survivors at risk. Please consider these factors before deciding whether video surveillance is right for your agency and be in touch with the Action Alliance with any questions.

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