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When People Take Photos and Videos of Minors Without Permission
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Introduction

Keeping children and youth safe is a necessary and foundational element for any adult in ministry, and any adult entrusted with the care of children. You may find yourself in safety situations that need additional attention, such as when another adult behaving in ways that are contrary to the code of conduct, inappropriate or unsafe for the environment. All of these types of situations require your action. One example of inappropriate behavior is when adults take photos or videos of children or youth who are in their ministry or employment environments. However, this type of behavior is not limited solely to our ministerial environments—it is something we might experience apart from our ministry or employment as well.

Consider these scenarios:

- A mother is with her children at a water park. She observes a man, who is sitting at the bottom of a water slide and taking photos of the sliding children. He is holding what appears to be an expensive camera with a very long lens.
- A father is with his children at a zoo. He observes a well-dressed man and woman, who are standing in the petting zoo area and taking a video of the young kids who do not appear to be their own children. Their camera appears to be well-made and expensive.
- A mother is picking up her children after school. She observes a man, standing outside of the school fence, taking photos of the children leaving school with what appears to be an elaborate camera and tripod setup.



In these situations:

- What are these parents' rights?
- What can they do?
- What should they do?
- How would the scenario change if it is observed by another adult, such as an employee or volunteer, who is not a parent of one of the children affected?

I was involved in identifying and subsequently arresting the offenders in all three of these real scenarios, which took place in the Chicago area. They were not arrested because they took those photos/videos. Rather, they were each arrested at a later time frame, after an investigation that was conducted for an entirely different reason—because they were under suspicion of creating and keeping child pornography, better known as child sexual abuse materials. It was only after law enforcement executed search warrants at the residences of these child abusers that they discovered the images of the children described in the three scenarios.

Although the examples here involve adults taking photos or videos of children with elaborate cameras, keep in mind that it is even easier for adults to take covert photos and videos of children with smartphones or tablets. There are also scenarios where a caring adult, who is not the parent, may witness situations of adults taking or posting photos of the children or youth in their care.

Can random people take photos of children?

Generally, and with only a few exceptions, it is legal for strangers to photograph or film/take video of minors in a "public space." A public space is generally defined as being an open, indoor or outdoor area, physically accessible to all. Further, in many instances, the stranger may legally post the images online. Contrary to what many believe, parents are not required to give their consent or sign a release for this activity to occur. However, this is different from a stranger or a known person who is taking photos or filming at a Church or school. Activities occurring on a parish or school property would not necessarily be considered a "public space" depending on the nature of the activity. Employees and volunteers would be held to the organization's technology policy, which would limit the taking or posting of content.

In the United States, even though the three situations outlined above were suspicious, though technically legal (although there could have been trespassing involved, particularly regarding the scenario at the school), there are some exceptions, which vary across states. The more public a space or event is, the less a person can have a reasonable expectation of privacy, which allows another person to take and/or post imagery, unless there are specific protocols in place. In general, and in most states, it is unlawful for any person to knowingly make a video record or transmit live video of another person without that person's consent in places where there is a reasonable expectation of privacy, such as in a restroom, tanning bed, tanning salon, locker room, changing room, or hotel bedroom. Additionally, in most states, it is unlawful for any person to place, or cause to be placed, a hidden device that makes a video record or transmits a live video in these same locations, when there is the intent to make a video record or transmit live video of another person without that person's consent.

Another exception is when a person takes what is colloquially referred to as, "up-skirt" (or conversely, or "down-blouse") photos or videos. In the United States, the laws on this type of behavior again vary by state. For instance, in Illinois, it is a Class A Misdemeanor for one to record a video of a person, "for the purpose of viewing the body of or the undergarments worn by that person without their consent."¹

Why do child abusers take surreptitious photos of children?

Law enforcement have frequently found that child abusers maintain a "collection." The child abuser collection consists of pornography, child erotica, child sexual abuse materials (otherwise known as child pornography) and "trophies" or "souvenirs" of the sexual abuse of their victims. In order to expand their collection, child abusers will frequent child-friendly locations, such as those described in the three scenarios above, in order to create or manufacture child erotica.

Historically, when the camera phone first arrived in the United States in 2002, camera-enabled mobile devices easily allowed a child abuser to not only surreptitiously "snap" pictures of children and young people, but also made it far easier for them to transmit the images to others. More recently, abusers taking surreptitious pictures of children and young people has exploded with the invention of inexpensive, covert or "spy" cameras that are hidden in a variety of innocuous devices, such as sunglasses, pens, wrist watches, car key fobs, binoculars, etc., all of which are easily available online. The visuals can then be posted, within minutes, on hundreds of child abuser or child erotica-oriented websites.

What can be done?

What can we do if we see someone taking a child's photo without asking permission in public? Or when we see an employee or volunteer taking or posting a child's photo without following the organization's protocol? People can take photos of children in public spaces, but there can be extenuating circumstances that would need additional attention by leadership or police.

First, for public spaces, ask yourself: does the situation involve a random stranger, whose behavior and physical position at the event is suspicious? Are they hovering in a public place where children gather, such as a zoo or playground, or is the photographer known to others and/or does the photographer's

presence seem logical?

In a public space, it is reasonable to question the person taking photos or videos and to ask them to stop. It is also reasonable to ask for the photos or videos to be immediately deleted. (The imagery should also be erased from the deleted folder on the device.) If the person is cooperative, deletes the images from the main folder and the "delete" folder and apologizes, that is generally less worrisome than an individual who attempts to justify their behavior by saying something such as, "I just like cute kids." In a place where there are protocols, it is always appropriate and necessary to involve the leadership or an employee. Simply share your observation, ask what they will be doing to address the situation, and follow up with documentation outlining your concerns. The organization is obligated to address problematic situations against the policy or code of conduct, and there may be specific requirements for any member or participant of the event/organization.

Lastly, one may always notify security or call the police when a concerning situation arises. It is not your responsibility to investigate the person, but it is your responsibility to communicate to the right place when you feel that something is wrong or concerning, or when someone seems to be behaving suspiciously. You may not know the specific history of the individual, but recall the three scenarios outlined above—where there were child sexual offenders who were photographing children in public.

Taking this a step further, while registered child sex offenders may legally be able to photograph or video children and young people in a public place, the public place selected may itself be a violation of the child sex offender registration laws, as child sex offenders are generally prohibited from being in a school, public park building, playground or a recreation area when persons under the age of 18 are present. This then could then result in the photographer or videographer being arrested for violating child sex offender laws, which is often a felony. You may not be aware of any of these items in advance, though you may be concerned about someone's behavior. Your observation here is not an investigation, but the point is that if you have a concern about someone's behavior, you should communicate it to someone who can do something about it.

Taking/Posting Photos or Videos involving a Parish or School:

Employees and volunteers must follow their diocesan or organization's policy before taking or posting any photos or videos of children within your programs. This often includes only taking photos or videos within the scope of a particular program or event, and with the permission of the organization and parents of the children involved. If any adult is not following the guidelines within their organization, communicate with the person's supervisor or program leadership immediately.

If you suspect any adult is sexually exploiting a child or youth online through images or videos, contact law enforcement, or the National Center for Missing and Exploited Children's CyberTipline at <https://report.cybertip.org/>.

Conclusion

Child abusers are "wolves in sheep's clothing," in that they are constantly seeking the opportunity to gain access to children for nefarious reasons. Safe adults—all of us, who are charged with protecting children must continue our efforts to be aware of our surroundings, including awareness of other adults in locations when children and young people are present.

Reference

1 Illinois Statute (720 ILCS 5/26-4) (from Ch. 38, par. 26-4)