

Washington Association of Prosecuting Attorneys (WAPA)  
Email regarding Guidelines for Law Enforcement and Prosecutors

**From:** Andy Miller [mailto:andy\_miller@co.benton.wa.us]  
**Sent:** Thursday, January 07, 2010 2:33 PM  
**To:** Huber, Sheila (ATG)  
**Cc:** Lisa Johnson; Tom McBride  
**Subject:** Fwd: FYI - child interviews and the recent Camreta decision

>>> "Tom McBride" <tmcbride@waprosecutors.org> 1/5/2010 12:02 PM >>>

To all Prosecutors - a great deal of attention is being given to a recent 9th Circuit case. Your special assault deputies, local law enforcement, and CPS are talking about how to integrate this opinion into current practices. Andy Miller, Chair of the Special Assault Committee, Lisa Johnson, Vice-Chair, and myself have been somewhat concerned that the email debate has settled on no interviews without a court order - in our view that is not always required and could place children at risk. The following short memo recommends first deciding whether you have a seizure (an issue conceded and not litigated in Camreta), as well as reminding to consider whether exigent circumstances justify a seizure and interview.  
FYI

The recent case of Greene v. Camreta, 2009 WL 4674129 (9<sup>th</sup> Cir.), a civil case that originated out of Oregon, has produced a number of questions regarding our practice in Washington State regarding protocols and practices for interviewing suspected victims of child abuse. It is our understanding that the defendants (police and DSHS) are making a motion for the case to be heard En Banc. However, in the interim, prosecutors, law enforcement and CPS caseworkers should be mindful of the holding of this case, while taking the opportunity to clarify your own practices and procedures.

*Relevant facts of Camreta:*

Defendant Greene was arrested for the sexual abuse of a 7 y.o. neighborhood boy. During the investigation, the victim's mother, who knew the defendant and his wife, reported that the defendant's wife mentioned that she didn't like the way her husband would make their two daughter sleep in his bed when he was intoxicated and that she didn't like the way he acted when they sat on his lap. Upon hearing of this statement and having learned that the defendant was released and was having contact with his minor daughters, Camreta, a DHS worker (CPS equivalent), accompanied by a uniformed police officer, went to the nine y.o. daughter's school to interview her. (This reportedly occurred three days after the receipt of the initial report). They requested a private office to conduct the interview, the interview lasted between 1-2 hours, the interview was not recorded. Based upon the interview "Camreta believed" that the defendant had sexually abused his daughter. When contacted, the defendant and his wife denied any sexual abuse but agreed to a safety plan where the defendant would not have unsupervised contact with either of his daughters. The defendant was later indicted for the abuse of his daughters.

The defendant's wife sued DHS and the law enforcement agency alleging, in addition to other claims, an unlawful seizure of her daughter without a warrant, probable cause or parental consent - contrary to the 4th Amendment. A three-judge panel from the Ninth Circuit agreed.

**Considerations for law enforcement officers and CPS caseworkers:**

**I. Is the interview a seizure?**

Not all interviews of child victims will necessarily be seizures for purpose of 4th amendment. If the interview is not a seizure, there is no need to obtain consent or court order for the interview.

Whether an interview is a seizure will depend on the totality of the circumstances of the interview. One test for determining whether a person has been seized is whether a reasonable person would have felt free to leave or otherwise decline the officer's request and terminate the interview, California V. Hodari D., 111 S. Ct. 1547, 1551, 113 L. Ed. 2d 690.

Under the facts and reasoning of Green v Camreta, the interview of the child at the school was a seizure.

Many factors will determine whether an interview is a seizure. For example:

- the length of the interview;
- the location of the interview (home, school or street);
- who initiated the interview (the victim called police or told someone who called the police vs. police contacting the victim pursuant to an ongoing investigation);
- the number of interview participants and their roles;
- the attire of the investigators, including whether a firearm was present or visible;
- the language and tone of the investigator/interviewer;
- how aggressive or confrontational the questioning (volunteered report or denial followed by questions that challenge the denial);
- physical contact between the investigator and the person being interviewed.

Officers and CPS workers should document in detail the circumstances of the interview, including the above factors. This documentation may determine whether a subsequent court will decide if the interview was a seizure.

**II. If the interview does constitute a seizure do exigent circumstances allow for the interview absent parental consent or court order?**

Exigent circumstances permit an officer or caseworker to seize a child without a warrant or parental consent if the investigator "reasonably believes" that:

- 1) medical issues need to be addressed immediately, or;
- 2) the child is or will be in danger of harm if the interview or physical exam is not immediately completed.

An argument that "exigent circumstances" exists will be more compelling if the interview is conducted with urgency and before the child returns home to either the alleged abuser or the perceived threat. Law enforcement officers should include language in their report as to why the officer believed there were exigent circumstances to interview the child without the consent of the parent. Information that the child has been abused, access by the suspect to the child, prior injuries or concerning behavior by or to the child, may justify a warrantless interview of a child. The report should also reference whether a decision was made, following the interview, to place the child into protective custody, and if so, why or why not.

Documentation of interviews pursuant to exigent circumstances is very important. Recording the interview is encouraged, insofar as it satisfies the documentation requirement and documents the length of the interview. At a minimum, law enforcement and CPS caseworkers should document who was present for the interview, the circumstances and physical set up of the interview, and provide a near verbatim summary of the questions asked and the responses by the child. In deciding the method of documentation, consideration should be given to the Children's Administration policy that all interviews of children, who are suspected victims of sexual abuse, should be audio-recorded.