



General Assembly

February Session, 2000

**Amendment**

LCO No. 2993

Offered by:

SEN. PENN, 23rd Dist.

To: Subst. Senate Bill No. 460

File No. 113

Cal. No. 149

**"An Act Concerning Changes To Statutes Affecting The  
Department Of Public Safety."**

1 After line 96, insert the following:

2 "Sec. 5. (NEW) (a) A person is guilty of criminal use of a computer  
3 when such person intentionally or recklessly uses a computer system,  
4 as defined in section 53a-250 of the general statutes, as the means to  
5 commit a crime, as defined in section 53a-24 of the general statutes.

6 (b) Criminal use of a computer is a class A misdemeanor.

7 Sec. 6. Section 52-570b of the general statutes is repealed and the  
8 following is substituted in lieu thereof:

9 (a) Any aggrieved person who has reason to believe that any other  
10 person has been engaged, is engaged or is about to engage in an  
11 alleged violation of any provision of section 53a-251 may bring an  
12 action against such person and may apply to the Superior Court for: (1)  
13 An order temporarily or permanently restraining and enjoining the  
14 commencement or continuance of such act or acts; (2) an order

15 directing restitution; or (3) an order directing the appointment of a  
16 receiver. Subject to making due provisions for the rights of innocent  
17 persons, a receiver shall have the power to sue for, collect, receive and  
18 take into his possession any property which belongs to the person who  
19 is alleged to have violated any provision of section 53a-251 and which  
20 may have been derived by, been used in or aided in any manner such  
21 alleged violation. Such property shall include goods and chattels,  
22 rights and credits, moneys and effects, books, records, documents,  
23 papers, choses in action, bills, notes and property of every description  
24 including all computer system equipment and data, and including  
25 property with which such property has been commingled if it cannot  
26 be identified in kind because of such commingling. The receiver shall  
27 also have the power to sell, convey and assign all of the foregoing and  
28 hold and dispose of the proceeds thereof under the direction of the  
29 court. Any person who has suffered damages as a result of an alleged  
30 violation of any provision of section 53a-251, and submits proof to the  
31 satisfaction of the court that he has in fact been damaged, may  
32 participate with general creditors in the distribution of the assets to the  
33 extent he has sustained out-of-pocket losses. The court shall have  
34 jurisdiction of all questions arising in such proceedings and may make  
35 such orders and judgments therein as may be required.

36 (b) The court may award the relief applied for or such other relief as  
37 it may deem appropriate in equity.

38 (c) Independent of or in conjunction with an action under subsection  
39 (a) of this section, any person who suffers any injury to person,  
40 business or property may bring an action for damages against a person  
41 who is alleged to have violated any provision of section 53a-251. The  
42 aggrieved person shall recover actual damages and damages for unjust  
43 enrichment not taken into account in computing damages for actual  
44 loss, and treble damages where there has been a showing of wilful and  
45 malicious conduct.

46 (d) Proof of pecuniary loss is not required to establish actual  
47 damages in connection with an alleged violation of subsection (e) of

48 section 53a-251 arising from misuse of private personal data.

49 (e) In any civil action brought under this section, the court shall  
50 award to any aggrieved person who prevails, reasonable costs and  
51 reasonable attorney's fees.

52 (f) The filing of a criminal action against a person is not a  
53 prerequisite to the bringing of a civil action under this section against  
54 such person.

55 (g) A civil action may be brought under this section against the state  
56 or any political subdivision thereof and the defense of governmental  
57 immunity shall not be available in any such action. The rights and  
58 liability of the state or any political subdivision thereof in each such  
59 action shall be coextensive with and shall equal the rights and liability  
60 of private persons in like circumstances.

61 (h) No civil action under this section may be brought but within  
62 three years from the date the alleged violation of section 53a-251 is  
63 discovered or should have been discovered by the exercise of  
64 reasonable diligence.

65 (i) For the purposes of this section, "person" means any natural  
66 person, corporation, limited liability company, trust, partnership,  
67 incorporated or unincorporated association or any other legal or  
68 governmental entity including any state or municipal entity or public  
69 official.

70 Sec. 7. Section 53a-193 of the general statutes is repealed and the  
71 following is substituted in lieu thereof:

72 The following definitions are applicable to this section and sections  
73 53a-194 to 53a-210, inclusive, as amended by this act:

74 [(1) Any material or performance is "obscene" if, (A) taken as a  
75 whole, it predominantly appeals to the prurient interest, (B) it depicts  
76 or describes in a patently offensive way a prohibited sexual act, and  
77 (C) taken as a whole, it lacks serious literary, artistic, educational,

78 political or scientific value. Predominant appeal shall be judged with  
79 reference to ordinary adults unless it appears from the character of the  
80 material or performance or the circumstances of its dissemination to be  
81 designed for some other specially susceptible audience. Whether a  
82 material or performance is obscene shall be judged by ordinary adults  
83 applying contemporary community standards. In applying  
84 contemporary community standards, the state of Connecticut is  
85 deemed to be the community.

86 (2) Material or a performance is "obscene as to minors" if it depicts a  
87 prohibited sexual act and, taken as a whole, it is harmful to minors. For  
88 purposes of this subsection: (A) "Minor" means any person less than  
89 seventeen years old as used in section 53a-196 and less than sixteen  
90 years old as used in sections 53a-196a, 53a-196b and 53a-196c and (B)  
91 "harmful to minors" means that quality of any description or  
92 representation, in whatever form, of a prohibited sexual act, when (i) it  
93 predominantly appeals to the prurient, shameful or morbid interest of  
94 minors, (ii) it is patently offensive to prevailing standards in the adult  
95 community as a whole with respect to what is suitable material for  
96 minors, and (iii) taken as a whole, it lacks serious literary, artistic,  
97 educational, political or scientific value for minors.

98 (3) "Prohibited sexual act" means erotic fondling, nude performance,  
99 sexual excitement, sado-masochistic abuse, masturbation or sexual  
100 intercourse.

101 (4) "Nude performance" means the showing of the human male or  
102 female genitals, pubic area or buttocks with less than a fully opaque  
103 covering, or the showing of the female breast with less than a fully  
104 opaque covering of any portion thereof below the top of the nipple, or  
105 the depiction of covered male genitals in a discernibly turgid state in  
106 any play, motion picture, dance or other exhibition performed before  
107 an audience.

108 (5) "Erotic fondling" means touching a person's clothed or unclothed  
109 genitals, pubic area, buttocks, or if such person is a female, breast.

110 (6) "Sexual excitement" means the condition of human male or  
111 female genitals when in a state of sexual stimulation or arousal.

112 (7) "Sado-masochistic abuse" means flagellation or torture by or  
113 upon a person clad in undergarments, a mask or bizarre costume, or  
114 the condition of being fettered, bound or otherwise physically  
115 restrained on the part of one so clothed.

116 (8) "Masturbation" means the real or simulated touching, rubbing or  
117 otherwise stimulating a person's own clothed or unclothed genitals,  
118 pubic area, buttocks, or, if the person is female, breast, either by  
119 manual manipulation or with an artificial instrument.

120 (9) "Sexual intercourse" means intercourse, real or simulated,  
121 whether genital-genital, oral-genital, anal-genital or oral-anal, whether  
122 between persons of the same or opposite sex or between a human and  
123 an animal, or with an artificial genital.

124 (10) "Material" means anything tangible which is capable of being  
125 used or adapted to arouse prurient, shameful or morbid interest,  
126 whether through the medium of reading, observation, sound or in any  
127 other manner. Undeveloped photographs, molds, printing plates, and  
128 the like, may be deemed obscene notwithstanding that processing or  
129 other acts may be required to make the obscenity patent or to  
130 disseminate it.

131 (11) "Performance" means any play, motion picture, dance or other  
132 exhibition performed before an audience.

133 (12) "Promote" means to manufacture, issue, sell, give, provide,  
134 lend, mail, deliver, transfer, transmit, publish, distribute, circulate,  
135 disseminate, present, exhibit, advertise, produce, direct or participate  
136 in.

137 (13) "Child pornography" means any material involving a live  
138 performance or photographic or other visual reproduction of a live  
139 performance which depicts a minor in a prohibited sexual act.]

140       (1) "Child pornography" means any visual depiction, including any  
141 photograph, film, video, picture or computer, as defined in subdivision  
142 (2) of section 53a-250, or computer-generated, image or picture,  
143 whether made or produced by electronic, mechanical or other means,  
144 of sexually explicit conduct, where (A) the production of such visual  
145 depiction involves the use of a minor engaging in sexually explicit  
146 conduct; (B) such visual depiction is, or appears to be, of a minor  
147 engaging in sexually explicit conduct; (C) such visual depiction has  
148 been created, adapted or modified to appear that an identifiable minor  
149 is engaging in sexually explicit conduct; or (D) such visual depiction is  
150 advertised, promoted, presented, described or distributed in such a  
151 manner that conveys the impression that the material is or contains a  
152 visual depiction of a minor engaging in sexually explicit conduct.

153       (2) "Harmful to minors" means that quality of any description or  
154 representation, in whatever form, of sexually explicit conduct, when  
155 (A) it predominantly appeals to the prurient, shameful or morbid  
156 interest of minors, (B) it is patently offensive to prevailing standards in  
157 the adult community as a whole with respect to what is suitable  
158 material for minors, and (C) taken as a whole, it lacks serious literary,  
159 artistic, educational, political or scientific value for minors.

160       (3) "Identifiable minor" means a person (A) (i) who was a minor at  
161 the time the visual depiction was created, adapted or modified, or (ii)  
162 whose image as a minor was used in creating, adapting or modifying  
163 the visual depiction; and (B) who is recognizable as an actual person  
164 by the person's face, likeness or other distinguishing characteristic,  
165 such as a unique birthmark or other recognizable feature. This  
166 subdivision shall not be construed to require proof of the actual  
167 identity of the identifiable minor.

168       (4) "Material" means anything tangible which is capable of being  
169 used or adapted to arouse prurient, shameful or morbid interest,  
170 whether through the medium of reading, observation, sound or in any  
171 other manner. "Material" includes visual depictions, undeveloped  
172 photographs, molds, printing plates, and the like, which may be

173 deemed obscene or to be child pornography notwithstanding that  
174 processing or other acts may be required to make the obscenity or  
175 child pornography patent or to disseminate it.

176 (5) "Minor" means any person under the age of eighteen years.

177 (6) A material or performance is "obscene" if (A) taken as a whole, it  
178 predominantly appeals to the prurient interest, (B) it depicts or  
179 describes in a patently offensive way sexually explicit conduct, and (C)  
180 taken as a whole, it lacks serious literary, artistic, educational, political  
181 or scientific value. Predominant appeal shall be judged with reference  
182 to ordinary adults unless it appears from the character of the material  
183 or performance or the circumstances of its dissemination to be  
184 designed for some other specially susceptible audience. Whether a  
185 material or performance is obscene shall be judged by ordinary adults  
186 applying contemporary community standards. In applying  
187 contemporary community standards, the state of Connecticut is  
188 deemed to be the community.

189 (7) A material or performance is "obscene as to minors" if it depicts  
190 sexually explicit conduct and, taken as a whole, it is harmful to minors.

191 (8) "Performance" means any play, motion picture, dance, visual  
192 depiction or other exhibition performed before an audience or  
193 transmitted via any medium.

194 (9) "Produce" means to produce, direct, manufacture, issue, publish  
195 or advertise.

196 (10) "Promote" means to manufacture, issue, sell, give, provide,  
197 lend, mail, deliver, transfer, transmit, publish, distribute, circulate,  
198 disseminate, present, exhibit, advertise, produce, direct or participate  
199 in and includes to transmit by computer network, as defined in section  
200 53a-250.

201 (11) "Sexually explicit conduct" means actual or simulated (A)  
202 sexual intercourse, including genital-genital, oral-genital, anal-genital

203 or oral-anal, whether between persons of the same or opposite sex, or  
204 with an artificial genital, (B) bestiality, (C) masturbation, (D) sadistic or  
205 masochistic abuse, or (E) lascivious exhibition of the genitals or pubic  
206 area of any person.

207 (12) "Visual depiction" includes undeveloped film and videotape  
208 and data, as defined in subdivision (8) of section 53a-250 that is  
209 capable of conversion into a visual image and includes encrypted data.

210 Sec. 8. Section 53a-196c of the general statutes is repealed and the  
211 following is substituted in lieu thereof:

212 (a) A person is guilty of importing child pornography when, with  
213 intent to promote child pornography, [he] such person knowingly  
214 imports or causes to be imported into the state any child pornography  
215 of known content and character.

216 (b) Importation of two or more copies of any publication or visual  
217 depiction containing child pornography shall be prima facie evidence  
218 that such publications or visual depictions were imported with intent  
219 to promote child pornography.

220 (c) Importing child pornography is a class C felony.

221 Sec. 9. This act shall take effect July 1, 2000."