



General Assembly

January Session, 2001

Raised Bill No. 6962

LCO No. 4493

Referred to Committee on Public Safety

Introduced by:
(PS)

**AN ACT CONCERNING USE OF A COMPUTER TO COMMIT CRIMES
AGAINST CHILDREN.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (a) A person is guilty of criminal use of a
2 computer when such person intentionally or recklessly uses a
3 computer system, as defined in section 53a-250 of the general statutes,
4 as the means to commit a crime, as defined in section 53a-24 of the
5 general statutes.

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

7 Sec. 2. Section 52-570b of the general statutes is repealed and the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] the receiver's possession any property which belongs to
19 the person who is alleged to have violated any provision of section
20 53a-251 and which may have been derived by, been used in or aided in
21 any manner such alleged violation. Such property shall include goods
22 and chattels, rights and credits, moneys and effects, books, records,
23 documents, papers, choses in action, bills, notes and property of every
24 description including all computer system equipment and data, and
25 including property with which such property has been commingled if
26 it cannot be identified in kind because of such commingling. The
27 receiver shall also have the power to sell, convey and assign all of the
28 foregoing and hold and dispose of the proceeds thereof under the
29 direction of the court. Any person who has suffered damages as a
30 result of an alleged violation of any provision of section 53a-251, and
31 submits proof to the satisfaction of the court that [he] such person has
32 in fact been damaged, may participate with general creditors in the
33 distribution of the assets to the extent [he has sustained] of such
34 person's out-of-pocket losses. The court shall have jurisdiction of all
35 questions arising in such proceedings and may make such orders and
36 judgments therein as may be required.

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

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

47 (d) Proof of pecuniary loss is not required to establish actual
48 damages in connection with an alleged violation of subsection (e) of
49 section 53a-251 arising from misuse of private personal data.

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

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

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

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

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

71 Sec. 3. Section 53a-193 of the general statutes is repealed and the
72 following is substituted in lieu thereof:

73 The following definitions are applicable to this section and sections
74 53a-194 to 53a-210, inclusive, as amended by this act:

75 [(1) Any material or performance is "obscene" if, (A) taken as a

76 whole, it predominantly appeals to the prurient interest, (B) it depicts
77 or describes in a patently offensive way a prohibited sexual act, and
78 (C) taken as a whole, it lacks serious literary, artistic, educational,
79 political or scientific value. Predominant appeal shall be judged with
80 reference to ordinary adults unless it appears from the character of the
81 material or performance or the circumstances of its dissemination to be
82 designed for some other specially susceptible audience. Whether a
83 material or performance is obscene shall be judged by ordinary adults
84 applying contemporary community standards. In applying
85 contemporary community standards, the state of Connecticut is
86 deemed to be the community.

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

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

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

108 an audience.

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

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

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

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

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

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

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

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

137 in.

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

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

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

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

169 (4) "Material" means anything tangible which is capable of being
170 used or adapted to arouse prurient, shameful or morbid interest,
171 whether through the medium of reading, observation, sound or in any
172 other manner. "Material" includes visual depictions, undeveloped
173 photographs, molds, printing plates, and the like, which may be
174 deemed obscene or to be child pornography notwithstanding that
175 processing or other acts may be required to make the obscenity or
176 child pornography patent or to disseminate it.

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

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

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

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

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

197 (10) "Promote" means to manufacture, issue, sell, give, provide,
198 lend, mail, deliver, transfer, transmit, publish, distribute, circulate,

199 disseminate, present, exhibit, advertise, produce, direct or participate
200 in and includes to transmit by computer network, as defined in section
201 53a-250.

202 (11) "Sexually explicit conduct" means actual or simulated (A)
203 sexual intercourse, including genital-genital, oral-genital, anal-genital
204 or oral-anal, whether between persons of the same or opposite sex, or
205 with an artificial genital, (B) bestiality, (C) masturbation, (D) sadistic or
206 masochistic abuse, or (E) lascivious exhibition of the genitals or pubic
207 area of any person.

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

211 Sec. 4. Section 53a-196c of the general statutes is repealed and the
212 following is substituted in lieu thereof:

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

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

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

222 Sec. 5. Section 35-11i of the general statutes is repealed and the
223 following is substituted in lieu thereof:

224 (a) Subject to the provisions of section 35-11k, as amended by this
225 act, any person who (1) uses in Connecticut, without the consent of the
226 registrant, any reproduction, counterfeit, copy or colorable imitation of
227 a mark registered under this chapter in connection with the sale,

228 offering for sale, distribution or advertising of any goods or services on
229 or in connection with which such use is likely to cause confusion or to
230 cause mistake or to deceive as to the source or origin of such goods or
231 services, or (2) reproduces, counterfeits, copies or colorably imitates
232 any such mark and applies such reproduction, counterfeit, copy or
233 colorable imitation to labels, signs, prints, packages, wrappers,
234 receptacles or advertisements intended to be used in commerce upon
235 or in connection with the sale, offering for sale, distribution or
236 advertising of goods or services on or in connection with which such
237 use is likely to cause confusion or to cause mistake or to deceive
238 purchasers, shall be liable in a civil action by the registrant for any or
239 all of the remedies provided in subsection (b) of this section, except
240 that under subdivision (2) of this subsection the registrant shall not be
241 entitled to recover profits or damages unless the acts have been
242 committed with the intent to cause confusion or to cause mistake or to
243 deceive.

244 (b) Any registrant of a mark registered under this chapter may
245 proceed by suit to enjoin the wrongful manufacture, use, display or
246 sale of any reproduction, counterfeit or imitation thereof and any court
247 of competent jurisdiction may grant injunctions to restrain such
248 manufacture, use, display or sale as may be deemed just and
249 reasonable, and may require the defendants to pay to such registrant
250 all profits derived from, or all damages suffered by reason of, such
251 wrongful manufacture, use, display or sale or both such profits and
252 damages; and such court may also order that any such reproduction,
253 counterfeit or imitation in the possession or under the control of any
254 defendant be delivered to an officer of the court to be destroyed, or to
255 the complainant. The court, in its discretion, may enter judgment for
256 an amount not to exceed three times such profits and damages and a
257 reasonable attorney's fee of the prevailing party in such cases where
258 the court finds the other party committed such wrongful acts with
259 knowledge or in bad faith or otherwise as according to the
260 circumstances of the case. The enumeration of any right or remedy
261 herein shall not affect a registrant's right to prosecute under any penal

262 law of this state.

263 (c) The registrant of a mark which is famous in this state shall be
264 entitled, subject to the principles of equity, to an injunction against
265 another's use of a mark, commencing after the registrant's mark
266 becomes famous, which causes dilution of the distinctive quality of the
267 registrant's mark, and to obtain such other relief as is provided in this
268 subsection. In determining whether a mark is famous, a court may
269 consider factors including, but not limited to the following: (1) The
270 degree of inherent or acquired distinctiveness of the mark in this state;
271 (2) the duration and extent of use of the mark in connection with the
272 goods and services; (3) the duration and extent of advertising and
273 publicity of the mark in this state; (4) the geographical extent of the
274 trading area in which the mark is used; (5) the channels of trade for the
275 goods or services with which the registrant's mark is used; (6) the
276 degree of recognition of the registrant's mark in its and in the other's
277 trading areas and channels of trade in this state; and (7) the nature and
278 extent of use of the same or similar mark by third parties. The
279 registrant shall be entitled only to injunctive relief in this state in an
280 action brought under this section, unless the subsequent user wilfully
281 intended to trade on the registrant's reputation or to cause dilution of
282 the registrant's mark. If such wilful intent is proven, the registrant shall
283 also be entitled to the remedies set forth in this chapter, subject to the
284 discretion of the court and the principles of equity.

285 (d) This section shall not apply to law enforcement officials in the
286 lawful performance of their duties.

287 Sec. 6. Section 35-11j of the general statutes is repealed and the
288 following is substituted in lieu thereof:

289 (a) Any person who, for [himself] on such person's own behalf or on
290 behalf of any other person, procures the filing or registration of any
291 mark in the office of the Secretary of the State under the provisions of
292 this chapter, by knowingly making any false or fraudulent
293 representation or declaration, orally or in writing, or by any other

294 fraudulent means, shall be liable to pay all damages sustained in
295 consequence of such filing or registration, to be recovered by or on
296 behalf of the party injured thereby in any court of competent
297 jurisdiction.

298 (b) This section shall not apply to law enforcement officials in the
299 lawful performance of their duties.

300 Sec. 7. Section 35-11k of the general statutes is repealed and the
301 following is substituted in lieu thereof:

302 Nothing in this chapter shall adversely affect the rights or the
303 enforcement of rights in marks or trade names acquired in good faith
304 at any time at common law. This section shall not apply to law
305 enforcement officials in the lawful performance of their duties.

PS *Joint Favorable C/R*

JUD