

Monique M. Ferraro  
Attorney-at-Law

**Testimony Against SB 37**  
**An Act Concerning Computer Crimes Against Children**  
To the Judiciary Committee of the Connecticut General Assembly  
February 25, 2008

Dear Senator McDonald, Representative Lawlor and distinguished members of the Judiciary Committee:

I am writing to voice my objections to SB37, An Act Concerning Computer Crimes Against Children. I have written a book on online child exploitation with my co-author, Eoghan Casey (Investigating Child Exploitation and Pornography: The Internet, Law and Forensic Science, Academic Press 2005), several book chapters and scholarly articles on the subject. I am also a practicing Connecticut attorney and a professional digital forensics examiner. I do not object to the passages of this Bill lightly. My reasons are elaborated more fully below. Succinctly, the Bill is superfluous. It creates new crimes for conduct already classified as criminal.

**Enticing a Minor by Inducing a Naked Performance Via the Internet**

SB 37 would make enticing a minor to display his or her intimate parts via the Internet a new crime. Although it's a great idea to go after offenders who target our children and exploit them using the Internet, I don't think we need this new crime.

I am concerned that we are creating too many crimes for committing acts already covered by other crimes. There are already crimes on our books that address this activity. Employing a minor in an obscene performance, promoting a minor in an obscene performance and risk of already criminalize this conduct. If the crimes are not completed, the same end is accomplished by charging the offender with attempt to commit the crime(s).

The crime created by SB 37 doesn't punish the conduct more severely

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than the crimes already addressing the conduct. This new crime would be a Class D Felony. Employing a Minor in an Obscene Performance is a Class A Felony, Promoting a Minor in an Obscene Performance is a Class B Felony. Risk of Injury to a Minor is a Class C Felony. Additionally, the conduct is a crime at the federal level. How many criminal laws need to apply to a single action?

**Viewing Child Pornography**

SB37 would create a new crime for viewing child pornography. This is the part of the Bill that I believe creates the most difficulty. I wonder how the crime will be proved. The text of the bill says that one is guilty of the crime if they knowingly view fifty or more images depicting child pornography via the Internet over a forty-eight hour period.

How will a prosecutor prove that a person 'knowingly' viewed images? If the person turned his or her head or closed their eyes, will they be guilty? (Presumably, not.) It is easy enough to prove that someone knowingly downloaded images from the Internet. It will be difficult without an admission or video of the person actually viewing the material to prove that he or she also viewed it.

The number, fifty images over the course of forty-eight hours, will be difficult to prove. The prosecution could come up with fifty or more images they believe the defendant viewed during the course of forty-eight hours via the Internet. But then, what happens if the defendant takes the case to trial and the prosecution has to actually prove the case? Will the prosecutor need to establish that the defendant viewed each and every of the fifty images, via the Internet, over the course of a single forty-eight hour period? (I think so.) Seems like a heavy burden of proof to me.

Also, the law will require that all fifty images be viewed via the Internet. What if the defendant viewed thirty images via the Internet and twenty images from a CD or DVD? The crime would not be completed. Similarly, if the defendant views the same image fifty times, does that meet the

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criteria for having completed the crime? I don't think so, but that would be up to the court to determine. (Fifty images or fifty different images? Does it count as a different image if the images have different file names but contain the same depiction?)

Finally, there is no exception for law enforcement officers. If a target sends an undercover police officer more than fifty images depicting child pornography over a two-day period, is he or she going to be charged with a crime? (No exception for law enforcement.)

I have children myself, and I have seen more child pornography during the course of my career than anyone should be subjected to. I do firmly believe that every time an image depicting child pornography is viewed that the child is re-victimized. The Connecticut General Assembly has made great strides in the past decade to address the burgeoning use of the Internet to facilitate the exploitation of children. The several task forces at the federal, state and local levels have done a commendable job in attempting to enforce the laws you and the Governor have created.

But, there is a time when there is too much of a good thing. When government over-criminalizes activities that are already addressed by other laws and when it creates laws that cannot possibly be enforced, the cause of justice is not served. Rather, the law becomes confusing and trite. I urge you to let SB 37 go. Please do not report it out of committee. It will not address any wrongful conduct not already addressed by other criminal laws. It won't increase penalties for the crimes. It doesn't serve any useful purpose except to convolute the law, and I do not believe that is your intent.

Yours sincerely and most respectfully,

Monique M. Ferraro, M.S., J.D., C.I.S.S.P.