Substitute House Bill No. 5533

Public Act No. 10-191

AN ACT CONCERNING SEXTING.

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

Section 1. (NEW) (*Effective October 1, 2010*) (a) (1) No person who is thirteen years of age or older but under eighteen years of age may knowingly possess any visual depiction of child pornography that the subject of such visual depiction knowingly and voluntarily transmitted by means of an electronic communication device to such person and in which the subject of such visual depiction is a person thirteen years of age or older but under sixteen years of age.

(2) No person who is thirteen years of age or older but under sixteen years of age may knowingly and voluntarily transmit by means of an electronic communication device a visual depiction of child pornography in which such person is the subject of such visual depiction to another person who is thirteen years of age or older but under eighteen years of age.

(b) As used in this section, "child pornography" and "visual depiction" have the same meanings as provided in section 53a-193 of the general statutes, and "electronic communication device" means any electronic device that is capable of transmitting a visual depiction, including a computer, computer network and computer system, as

those terms are defined in section 53a-250 of the general statutes, and a cellular or wireless telephone.

(c) Any person who violates the provisions of this section shall be guilty of a class A misdemeanor.

Sec. 2. Section 53a-196d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

(a) A person is guilty of possessing child pornography in the first degree when such person knowingly possesses fifty or more visual depictions of child pornography.

(b) In any prosecution for an offense under this section, it shall be an affirmative defense that the acts of the defendant, if proven, would constitute a violation of section 1 of this act.

[(b)**]** (c) Possessing child pornography in the first degree is a class B felony and any person found guilty under this section shall be sentenced to a term of imprisonment of which five years of the sentence imposed may not be suspended or reduced by the court.

Sec. 3. Section 53a-196e of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

(a) A person is guilty of possessing child pornography in the second degree when such person knowingly possesses twenty or more but fewer than fifty visual depictions of child pornography.

(b) In any prosecution for an offense under this section, it shall be an affirmative defense that the acts of the defendant, if proven, would constitute a violation of section 1 of this act.

[(b)**]** (c) Possessing child pornography in the second degree is a class C felony and any person found guilty under this section shall be sentenced to a term of imprisonment of which two years of the

sentence imposed may not be suspended or reduced by the court.

Sec. 4. Section 53a-196f of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

(a) A person is guilty of possessing child pornography in the third degree when such person knowingly possesses fewer than twenty visual depictions of child pornography.

(b) In any prosecution for an offense under this section, it shall be an affirmative defense that the acts of the defendant, if proven, would constitute a violation of section 1 of this act.

[(b)**]** (c) Possessing child pornography in the third degree is a class D felony and any person found guilty under this section shall be sentenced to a term of imprisonment of which one year of the sentence imposed may not be suspended or reduced by the court.

Sec. 5. Section 53a-196g of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

In any prosecution for a violation of section 53a-196d, 53a-196e or 53a-196f, as amended by this act, or section 1 of this act, it shall be an affirmative defense that (1) the defendant (A) possessed fewer than three visual depictions of child pornography, (B) did not knowingly purchase, procure, solicit or request such visual depictions or knowingly take any other action to cause such visual depictions to come into the defendant's possession, and (C) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any visual depiction or copy thereof, took reasonable steps to destroy each such visual depiction or reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction, or (2) the defendant possessed a visual depiction of a nude person under sixteen years of age for a bona fide artistic, medical, scientific, educational, religious, governmental or

judicial purpose.

Approved June 8, 2010