



# House of Representatives

General Assembly

**File No. 554**

February Session, 2010

House Bill No. 5030

*House of Representatives, April 15, 2010*

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

***AN ACT CONCERNING THE FORFEITURE OF MONEY AND PROPERTY RELATED TO CHILD SEXUAL EXPLOITATION AND HUMAN TRAFFICKING AND THE POSSESSION OF CHILD PORNOGRAPHY.***

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

1 Section 1. (NEW) (*Effective October 1, 2010*) (a) The following  
2 property shall be subject to forfeiture to the state pursuant to  
3 subsection (b) of this section:

4 (1) All moneys used, or intended for use, in a violation of  
5 subdivision (3) of subsection (a) of section 53-21 or section 53a-86, 53a-  
6 87, 53a-90a, 53a-189a, 53a-189b, 53a-192a, 53a-196a, 53a-196b or 53a-  
7 196c of the general statutes;

8 (2) All property constituting the proceeds obtained, directly or  
9 indirectly, from a violation of subdivision (3) of subsection (a) of  
10 section 53-21 or section 53a-86, 53a-87, 53a-90a, 53a-189a, 53a-189b,  
11 53a-192a, 53a-196a, 53a-196b or 53a-196c of the general statutes;

12 (3) All property derived from the proceeds obtained, directly or  
13 indirectly, from any sale or exchange for pecuniary gain from a  
14 violation of subdivision (3) of subsection (a) of section 53-21 or section  
15 53a-86, 53a-87, 53a-90a, 53a-189a, 53a-189b, 53a-192a, 53a-196a, 53a-  
16 196b or 53a-196c of the general statutes;

17 (4) All property used or intended for use, in any manner or part, to  
18 commit or facilitate the commission of a violation for pecuniary gain of  
19 subdivision (3) of subsection (a) of section 53-21 or section 53a-86, 53a-  
20 87, 53a-90a, 53a-189a, 53a-189b, 53a-192a, 53a-196a, 53a-196b or 53a-  
21 196c of the general statutes.

22 (b) Not later than ninety days after the seizure of moneys or  
23 property subject to forfeiture pursuant to subsection (a) of this section,  
24 in connection with a lawful criminal arrest or a lawful search, the Chief  
25 State's Attorney or a deputy chief state's attorney, state's attorney or  
26 assistant or deputy assistant state's attorney may petition the court in  
27 the nature of a proceeding in rem to order forfeiture of such moneys or  
28 property. Such proceeding shall be deemed a civil suit in equity in  
29 which the state shall have the burden of proving all material facts by  
30 clear and convincing evidence. The court shall identify the owner of  
31 such moneys or property and any other person as appears to have an  
32 interest therein, and order the state to give notice to such owner and  
33 any interested person, including any victim of the crime with respect  
34 to which such moneys or property were seized, by certified or  
35 registered mail. The court shall promptly, but not less than two weeks  
36 after such notice, hold a hearing on the petition. No testimony offered  
37 or evidence produced by such owner or interested person at such  
38 hearing and no evidence discovered as a result of or otherwise derived  
39 from such testimony or evidence may be used against such owner or  
40 interested person in any proceeding, except that no such owner or  
41 interested person shall be immune from prosecution for perjury or  
42 contempt committed while giving such testimony or producing such  
43 evidence. At such hearing, the court shall hear evidence and make  
44 findings of fact and enter conclusions of law and shall issue a final  
45 order from which the parties shall have such right of appeal as from a

46 decree in equity.

47 (c) No moneys or property shall be forfeited under this section to  
48 the extent of the interest of an owner or lienholder by reason of any act  
49 or omission committed by another person if such owner or lienholder  
50 did not know and could not have reasonably known that such moneys  
51 or property was being used or was intended to be used in, or was  
52 derived from, criminal activity.

53 (d) Notwithstanding the provisions of subsection (a) of this section,  
54 no moneys or property used or intended to be used by the owner  
55 thereof to pay legitimate attorney's fees in connection with his or her  
56 defense in a criminal prosecution shall be subject to forfeiture under  
57 this section.

58 (e) Any property ordered forfeited pursuant to subsection (b) of this  
59 section shall be sold at public auction conducted by the Commissioner  
60 of Administrative Services or the commissioner's designee.

61 (f) The proceeds from any sale of property under subsection (e) of  
62 this section and any moneys forfeited under this section shall be  
63 applied: (1) To payment of the balance due on any lien preserved by  
64 the court in the forfeiture proceedings; (2) to payment of any costs  
65 incurred for the storage, maintenance, security and forfeiture of any  
66 such property; and (3) to payment of court costs. The balance, if any,  
67 shall be deposited in the General Fund.

68 Sec. 2. Section 7-294f of the general statutes is repealed and the  
69 following is substituted in lieu thereof (*Effective October 1, 2010*):

70 Each police basic training program conducted or administered by  
71 the Division of State Police within the Department of Public Safety, the  
72 Police Officer Standards and Training Council established under  
73 section 7-294b or municipal police department in the state shall include  
74 a course on sexual assault investigation and rape crisis intervention  
75 and each review training program conducted by such agencies shall  
76 make provision for such a course.

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

79 (a) A person is guilty of possessing child pornography in the first  
80 degree when such person knowingly possesses (1) fifty or more visual  
81 depictions of child pornography, or (2) one or more visual depictions  
82 of child pornography that depict the infliction or threatened infliction  
83 of serious physical injury.

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

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2010</i>	New section
Sec. 2	<i>October 1, 2010</i>	7-294f
Sec. 3	<i>October 1, 2010</i>	53a-196d

**JUD**      *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

**OFA Fiscal Note**

**State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 11 \$</b>	<b>FY 12 \$</b>
Dept. of Administrative Services	GF - Revenue Gain	40,875	54,500

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

This bill would generate an estimated state revenue gain of \$54,500 annually as a result of the forfeiture of money and property related to child sexual exploitation and human trafficking and child pornography. The number of convictions under statutes included in the bill is approximately 2.4% of the number of convictions under statutes related to the drug asset forfeitures. Any state revenue gain under the bill is therefore estimated to be 2.4% of \$2.26 million, or \$54,500 annually.

The Department of Administrative Services could process property forfeited under this bill through the normal course of its duties and at no additional cost.

It is anticipated that there would be no additional cost to the bill's requirement that a sexual assault investigation course be included in training programs conducted by the Department of Public Safety, the Police Officer Standards and Training Council (POST), or municipal police departments. Currently, the basic training program conducted at POST includes training on sexual assault investigation.

**The Out Years**

The annualized ongoing fiscal impact identified above would

continue into the future subject to inflation.

*Sources: CORE-CT Flexible Ledger Analysis Tool (Revenues); Judicial Department's  
Quarterly Criminal/Motor Vehicle Statute Files*

**OLR Bill Analysis****HB 5030*****AN ACT CONCERNING THE FORFEITURE OF MONEY AND PROPERTY RELATED TO CHILD SEXUAL EXPLOITATION AND HUMAN TRAFFICKING AND THE POSSESSION OF CHILD PORNOGRAPHY.*****SUMMARY:**

This bill establishes a civil forfeiture procedure to seize tainted funds and property (i.e., money and property used or obtained from crimes involving sexual offenses). It also expands what constitutes 1<sup>st</sup> degree possessing child pornography. The bill also requires police basic training and review training programs to include a course on sexual assault investigations. They must already teach courses on rape crisis intervention.

EFFECTIVE DATE: October 1, 2010

**FORFEITURE**

Under the bill, the crimes that trigger the taking of tainted funds and property are:

1. that portion of the risk of injury to a minor statute involving sale of a child under age 16;
2. 1<sup>st</sup> or 2<sup>nd</sup> degree promoting prostitution;
3. enticing a minor using an interactive computer;
4. voyeurism, disseminating voyeuristic material, and employing or promoting a minor in an obscene performance;
5. human trafficking; and
6. importing child pornography.

The funds and property subject to forfeiture are:

1. all money used or intended for use in violation of the laws listed above;
2. all property constituting the proceeds obtained, directly or indirectly, from a violation of those laws;
3. all property derived from the proceeds obtained, directly or indirectly, from any sale or exchange for pecuniary gain from those statutory violations; and
4. all property used or intended for use, in any manner or part, to commit or facilitate the violation of those statutes for pecuniary gain.

### ***Procedure***

Under the bill, the chief or deputy chief state's attorney, state's attorney, or assistant or deputy state's attorney can file a petition for forfeiture. This must occur no later than 90 days after the money or property was seized.

The court must identify the money or property owner and anyone else who appears to have an interest in it and must order the state to give them notice by certified or registered mail. The crime victim is also entitled to receive notice in the same manner. Under the bill, the court must promptly hold a hearing at least two weeks after sending notice, and the state must prove its case by clear and convincing evidence.

### ***Inadmissibility of Evidence***

The bill specifies that testimony and evidence the owner or other interested party produces or that is discovered at the hearing cannot be used against them in any proceeding, but that they are subject to prosecution for perjury or contempt committed while testifying or producing evidence. The court must hear evidence at the hearing and make findings of fact and conclusions of law. It must issue a final

decree.

Under the bill, no money or property can be forfeited:

1. to the extent of the interest of an owner or lien holder if he or she did not know and could not have reasonably known that such money or property was being used or was intended to be used in, or was derived from, another person's criminal activity or
2. if the owner used or intends to use the property or money to pay legitimate attorney's fees for his or her defense in a criminal prosecution.

The commissioner of administrative services, or a designee, must sell forfeited property at public auction. The sale proceeds and any forfeited money must be applied to pay (1) the balance due on any lien the court preserved; (2) any costs incurred for the storage, maintenance, security, and forfeiture of the property; or (3) court costs. Any remainder goes into the General Fund.

### **FIRST-DEGREE POSSESSING CHILD PORNOGRAPHY**

Currently, a person commits the crime of possessing child pornography by knowingly possessing 50 or more visual depictions of child pornography. The bill also makes it 1<sup>st</sup> degree possession of child pornography to knowingly possess one or more visual depictions of child pornography that depict the infliction or threatened infliction of serious physical injury.

First-degree possessing child pornography is a class B felony, punishable by imprisonment for up to 20 years, a fine of up to \$15,000, or both. The crime carries a five-year mandatory minimum sentence.

### **BACKGROUND**

#### ***Child Pornography***

Child pornography means any visual depiction, including any photograph, film, videotape, picture, or computer-generated image or

picture, whether made or produced by electronic, mechanical or other means, of sexually explicit conduct, where the production of such visual depiction involves the use of a person under age 16 engaging in sexually explicit conduct, provided whether the subject of a visual depiction was a person under age 16 is a question to be decided by the trier of fact.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea 40 Nay 0 (03/29/2010)