



# House of Representatives

General Assembly

**File No. 567**

February Session, 2010

Substitute House Bill No. 5533

*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 substitute bill ought to pass.

## ***AN ACT CONCERNING SEXTING.***

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

1 Section 1. (NEW) (*Effective October 1, 2010*) (a) No person who is  
2 thirteen years of age or older but under eighteen years of age may (1)  
3 knowingly possess any visual depiction of child pornography that the  
4 subject of such visual depiction knowingly and voluntarily transmitted  
5 by means of an electronic communication device to such person and in  
6 which the subject of such visual depiction is a person thirteen years of  
7 age or older but under eighteen years of age, or (2) knowingly and  
8 voluntarily transmit by means of an electronic communication device a  
9 visual depiction of child pornography in which such person is the  
10 subject of such visual depiction to another person who is thirteen years  
11 of age or older but under eighteen years of age.

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

16 including a computer, computer network and computer system, as  
17 those terms are defined in section 53a-250 of the general statutes, and a  
18 cellular or wireless telephone.

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

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 Section 53a-196d of the general statutes is repealed and the  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

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

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

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

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

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

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

41 [(b)] (c) Possessing child pornography in the second degree is a class  
42 C felony and any person found guilty under this section shall be  
43 sentenced to a term of imprisonment of which two years of the  
44 sentence imposed may not be suspended or reduced by the court.

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

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

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

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

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

59 In any prosecution for a violation of section 53a-196d, 53a-196e or  
60 53a-196f, as amended by this act, or section 1 of this act, it shall be an  
61 affirmative defense that (1) the defendant (A) possessed fewer than  
62 three visual depictions of child pornography, (B) did not knowingly  
63 purchase, procure, solicit or request such visual depictions or  
64 knowingly take any other action to cause such visual depictions to  
65 come into the defendant's possession, and (C) promptly and in good  
66 faith, and without retaining or allowing any person, other than a law  
67 enforcement agency, to access any visual depiction or copy thereof,  
68 took reasonable steps to destroy each such visual depiction or reported  
69 the matter to a law enforcement agency and afforded that agency  
70 access to each such visual depiction, or (2) the defendant possessed a  
71 visual depiction of a nude person under sixteen years of age for a bona  
72 fide artistic, medical, scientific, educational, religious, governmental or  
73 judicial purpose.

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>	53a-196d
Sec. 3	<i>October 1, 2010</i>	53a-196e
Sec. 4	<i>October 1, 2010</i>	53a-196f
Sec. 5	<i>October 1, 2010</i>	53a-196g

**JUD**      *Joint Favorable Subst.*

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>
Correction, Dept.; Judicial Department (Probation)	GF - Net Savings	Potential	Potential

Note: GF=General Fund

**Municipal Impact:** None

### **Explanation**

The bill could generate savings to the Department of Correction by reducing or eliminating the potential term of incarceration for certain offenders. Any such savings would be partially offset by increased costs for supervising these offenders on probation.

The bill provides that any person between the ages of 13 and 17 years of age who is engaged in "sexting" could be convicted of a class "A" misdemeanor rather than a class "B" to "D" felony.<sup>1</sup> In 2008, there were 43 convictions for child pornography; it is unknown how many of these convictions would meet the criteria set forth in the bill. On average, it costs the state \$3,736 to supervise an offender on probation in the community as compared to \$47,425 to incarcerate the offender.

### **The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

Sources: *Quarterly Reports of the Judicial Department*

<sup>1</sup> These crimes are punishable as follows: (1) a class "A" misdemeanor is punishable by imprisonment for up to 1 year; (2) a class "D" felony is punishable by imprisonment for up to 5 years; and (3) a class "B" felony is punishable by imprisonment for up to 20 years.

**OLR Bill Analysis**

**sHB 5533**

***AN ACT CONCERNING SEXTING.***

**SUMMARY:**

This bill provides that in a prosecution for felony possession of child pornography, it is an affirmative defense that the defendant's acts, if proven, would constitute certain acts of sexting or other electronic transmission or possession of child pornography by persons 13 to 17 years old, as outlined below.

The bill creates a new class A misdemeanor offense for such acts, and outlines two ways to violate its provisions:

1. the knowing possession of a visual depiction of child pornography that the subject of the depiction knowingly and voluntarily sent to the recipient by an electronic device capable of transmitting a visual depiction, including a cellular or wireless phone, computer, or computer network and computer system; and
2. the knowing and voluntary transmission, by means of such an electronic device, of a visual depiction of child pornography.

In either case, the sender must also be the subject of the depiction, and both the sender and recipient must be 13 to 17 years old.

The bill applies the same definitions of "child pornography" and "visual depiction" in current law for felony child pornography and related offenses. While the bill provides that the misdemeanor applies to 13- to 17-year olds, by law, child pornography involves children under age 16.

By law, persons convicted of felony possession of child

pornography may have to register as sex offenders. Such persons also face potentially longer periods of probation than those convicted for most other felonies. These conditions do not apply to persons convicted of the misdemeanor offense created by the bill.

Under the bill, the existing affirmative defenses for felony possession of child pornography also apply to the misdemeanor offense created by the bill. By law, class A misdemeanors are punishable by up to one year in prison, a fine of up to \$2,000, or both.

EFFECTIVE DATE: October 1, 2010

### **DEFINITIONS**

Child pornography means any visual depiction, including any photograph, film, videotape, picture or computer-generated image or picture, produced by electronic, mechanical, or other means, of sexually explicit conduct, where the production involves the use of a person under age 16 engaging in sexually explicit conduct. Whether the subject of the depiction was under age 16 at the time it was created is a question to be decided by the trier of fact.

“Visual depiction” includes undeveloped film and videotape and information of any kind in any form, including computer software, capable of conversion into a visual image, and includes encrypted data.

### **AFFIRMATIVE DEFENSES**

It is an affirmative defense if the defendant:

1. possessed fewer than three visual depictions of child pornography;
2. did not knowingly purchase, procure, solicit or request the depictions or knowingly take any other action to cause them to come into his or her possession; and
3. promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any

depiction or copy, (a) took reasonable steps to destroy each depiction or (b) reported the matter to a law enforcement agency and gave that agency access to each depiction.

It is also an affirmative defense if the defendant possessed a visual depiction of a nude person under age 16 for a bona fide artistic, medical, scientific, educational, religious, governmental or judicial purpose.

## **BACKGROUND**

### ***Possession of Child Pornography***

The felony offense of child pornography is divided into three degrees, depending on the number of visual images that the defendant knowingly possesses. The offenses range from a class B to a class D felony.

## **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 39 Nay 5 (03/29/2010)