



House of Representatives

General Assembly

File No. 550

February Session, 2014

Substitute House Bill No. 5525

House of Representatives, April 15, 2014

The Committee on Judiciary reported through REP. FOX, G. of the 146th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING CHILD PORNOGRAPHY.

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

1 Section 1. Section 53a-196d of the general statutes is repealed and
2 the following is substituted in lieu thereof (*Effective October 1, 2014*):

3 (a) A person is guilty of possessing child pornography in the first
4 degree when such person knowingly possesses (1) fifty or more visual
5 depictions of child pornography, or (2) one or more visual depictions
6 of child pornography that depict the infliction or threatened infliction
7 of serious physical injury, or (3) (A) a series of images in electronic,
8 digital or other format, which is intended to be displayed
9 continuously, or a film or videotape, that depicts (i) more than one
10 child engaging in sexually explicit conduct, or (ii) more than one act of
11 sexually explicit conduct by one or more children, or (B) any
12 combination of a (i) series of images in electronic, digital or other
13 format, which is intended to be displayed continuously, (ii) film, or (iii)
14 videotape, which series, film or videotape each depicts a single act of
15 sexually explicit conduct by one child.

16 (b) In any prosecution for an offense under this section, it shall be an
17 affirmative defense that the acts of the defendant, if proven, would
18 constitute a violation of section 53a-196h.

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

23 Sec. 2. Section 53a-196e of the general statutes is repealed and the
24 following is substituted in lieu thereof (*Effective October 1, 2014*):

25 (a) A person is guilty of possessing child pornography in the second
26 degree when such person knowingly possesses (1) twenty or more but
27 fewer than fifty visual depictions of child pornography, or (2) a series
28 of images in electronic, digital or other format, which is intended to be
29 displayed continuously, consisting of twenty or more but fewer than
30 fifty frames, or a film or videotape, consisting of twenty or more but
31 fewer than fifty frames, that depicts a single act of sexually explicit
32 conduct by one child.

33 (b) In any prosecution for an offense under this section, it shall be an
34 affirmative defense that the acts of the defendant, if proven, would
35 constitute a violation of section 53a-196h.

36 (c) Possessing child pornography in the second degree is a class C
37 felony and any person found guilty under this section shall be
38 sentenced to a term of imprisonment of which two years of the
39 sentence imposed may not be suspended or reduced by the court.

40 Sec. 3. Section 53a-196g of the general statutes is repealed and the
41 following is substituted in lieu thereof (*Effective October 1, 2014*):

42 In any prosecution for a violation of section 53a-196d, as amended
43 by this act, 53a-196e, as amended by this act, 53a-196f or 53a-196h it
44 shall be an affirmative defense that (1) the defendant (A) possessed
45 fewer than three visual depictions, other than a series of images in
46 electronic, digital or other format which is intended to be displayed

47 continuously, or a film or videotape, of child pornography, (B) did not
 48 knowingly purchase, procure, solicit or request such visual depictions
 49 or knowingly take any other action to cause such visual depictions to
 50 come into the defendant's possession, and (C) promptly and in good
 51 faith, and without retaining or allowing any person, other than a law
 52 enforcement agency, to access any visual depiction or copy thereof,
 53 took reasonable steps to destroy each such visual depiction or reported
 54 the matter to a law enforcement agency and afforded that agency
 55 access to each such visual depiction, or (2) the defendant possessed a
 56 visual depiction of a nude person under sixteen years of age for a bona
 57 fide artistic, medical, scientific, educational, religious, governmental or
 58 judicial purpose.

59 Sec. 4. Subdivision (13) of section 53a-193 of the general statutes is
 60 repealed and the following is substituted in lieu thereof (*Effective*
 61 *October 1, 2014*):

62 (13) "Child pornography" means any visual depiction including any
 63 photograph, film, videotape, picture or computer-generated image or
 64 picture, whether made or produced by electronic, digital, mechanical
 65 or other means, of sexually explicit conduct, where the production of
 66 such visual depiction involves the use of a person under sixteen years
 67 of age engaging in sexually explicit conduct, provided whether the
 68 subject of a visual depiction was a person under sixteen years of age at
 69 the time the visual depiction was created is a question to be decided by
 70 the trier of fact.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2014</i>	53a-196d
Sec. 2	<i>October 1, 2014</i>	53a-196e
Sec. 3	<i>October 1, 2014</i>	53a-196g
Sec. 4	<i>October 1, 2014</i>	53a-193(13)

Statement of Legislative Commissioners:

In Section 2(a)(2), the phrase "consisting of twenty or more but fewer than fifty frames," was inserted after "film or videotape" for

consistency with the reference to images in electronic, digital or other format.

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:

Agency Affected	Fund-Effect	FY 15 \$	FY 16 \$
Correction, Dept.	GF - Potential Cost	See Below	See Below

Municipal Impact: None

Explanation

The bill broadens the classification of child pornography in two statutes and results in potential costs to the Department of Correction due to longer sentences for future offenders charged under the expanded offenses in this bill. On average, it costs the agency \$50,690 (including benefits) to incarcerate an offender. Annually, an average of 30 offenders are convicted or accept plea bargains of a Class B felony under 53a-196d, which carries a minimum mandatory sentence of 5 years. Additionally, an average of 8 offenders are convicted or accept plea bargains of a Class C felony under 53a-196e which carries a mandatory minimum sentence of 2 years.

The Out Years

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

Sources: *Judicial Department Offenses and Revenue Database*

OLR Bill Analysis

sHB 5525

AN ACT CONCERNING CHILD PORNOGRAPHY.

SUMMARY:

Under current law, “visual depictions” of children (under age 16) engaged in sexually explicit conduct are subject to the state’s child pornography laws, whether they are generated by electronic, mechanical, or other means. By law, a “visual depiction” is a photograph, film, videotape, picture, or computer-generated image or picture. This bill specifically includes visual depictions generated by digital means.

The bill expands the range of visual depictions that constitute the crimes of first- and second-degree possession of child pornography. It does so by adding certain visual depictions based on the number of victims, illicit acts, or frames they contain. Under current law, a defendant is charged based on the number of visual depictions he or she possesses and whether they show the infliction or threatened infliction of serious physical injury.

Lastly, the bill excludes certain visual depictions of child pornography from the “affirmative defense” available under current child pornography laws. (An “affirmative defense” is a defense a defendant can raise and prove to avoid conviction for the crime.) Under current law, the possession of less than three visual depictions of child pornography is an affirmative defense to a charge of first-, second-, or third-degree possession of child pornography or a charge of possession or transmission of child pornography by a minor. The bill excludes from such a defense a visual depiction that is a (1) series of images intended for continuous display, (2) film, or (3) videotape.

EFFECTIVE DATE: October 1, 2014

FIRST-DEGREE POSSESSION OF CHILD PORNOGRAPHY

The bill expands the range of visual depictions the possession of which constitutes first-degree possession of child pornography.

Under current law, a person is guilty of this crime if he or she knowingly possesses (1) 50 or more visual depictions of child pornography or (2) one or more visual depictions of child pornography that depict the infliction or threatened infliction of serious physical injury.

Under the bill, a person is also guilty of first-degree possession of child pornography if he or she knowingly possesses:

1. a series of images (in electronic, digital, or other format) intended for continuous display, film, or videotape that depicts (a) more than one child engaging in sexually explicit conduct or (b) more than one act of sexually explicit conduct by one or more children, or
2. any combination of such a series of images, films, or videotapes that each depicts a single act of sexually explicit conduct by one child.

By law, first-degree possession of child pornography is a class B felony, punishable by imprisonment up to 20 years, with a mandatory minimum sentence of five years, and a fine of up to \$15,000.

SECOND-DEGREE POSSESSION OF CHILD PORNOGRAPHY

The bill also expands the range of visual depictions the possession of which constitutes second-degree possession of child pornography.

Under current law, a person is guilty of this crime if he or she knowingly possesses at least 20 but fewer than 50 visual depictions of child pornography.

Under the bill, a person is also guilty of second-degree possession of child pornography, if he or she knowingly possesses a series of images (in electronic, digital, or other format) intended for continuous display,

film, or videotape; and the series of images, film, or videotape (1) consists of at least 20 but fewer than 50 frames and (2) depicts a single act of sexually explicit conduct by one child.

By law, second-degree possession of child pornography is a class C felony, punishable by imprisonment up to 10 years, with a mandatory minimum sentence of two years, and a fine up to \$10,000.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 38 Nay 1 (03/28/2014)