

CCDLA
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March 12, 2014

The Honorable Eric D. Coleman
The Honorable Gerald M. Fox.
Chairmen
Joint Committee on Judiciary
Room 2500, Legislative Office Building
Hartford, CT 06106

Re: R.B. 5525, An Act Concerning Child Pornography

CCDLA is a not-for-profit organization of more than three hundred lawyers who are dedicated to defending persons accused of criminal offenses. Founded in 1988, CCDLA is the only statewide criminal defense lawyers' organization in Connecticut. An affiliate of the National Association of Criminal Defense Lawyers, CCDLA works to improve the criminal justice system by insuring that the individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally and that those rights are not diminished.

CCDLA opposes Raised Bill 5525, An Act Concerning Child Pornography. In stating this position, CCDLA advises that the amendments proposed by the Bill do not achieve the stated purpose of the Bill: to clarify the prohibition of multiple images. Raised Bill 5525 proposes to amend §53a-196d of the Connecticut General Statute by making possession of only one video recording a class C Felony and, in some instances, a class B Felony. A violation constituting a Class B Felony would carry a five-year mandatory minimum sentence. These amendments represent a dramatic -- one might say draconian -- increase in the penalties where an offender possesses video rather than photographic files containing prohibited material.

Where previously videos would be counted as one file, this amendment changes significantly how the illicit material is quantified. Under the current proposal, one video would be viewed just as harshly as the possession of 50 separate images. It is unclear where or how this equation was derived. In reality, it is likely that the proposed amendment will do little to prevent or deter the possession or distribution of child pornography. It is also clear that Raised Bill 5525 will further tie the hands of judges who, rather than being able to craft an appropriate sentence for an accused --providing for rehabilitation as well as punishment -- will have little leeway and will be forced to impose lengthy mandatory minimum sentences in instances where they may not otherwise be appropriate. While the purpose of this testimony is not to reargue the effectiveness or ineffectiveness of mandatory sentences, it is important to highlight how this amendment will

require a significant mandatory sentence for the possession of a single prohibited video, even in cases where a defendant has no prior record.

The definitions within §53a-193 were drafted in a manner to allow law enforcement to easily quantify the images possessed. As the definitions are presently codified, an accused is or should be charged according to how many files the person has in his or her possession. This is a more workable approach than the proposal provided by Raised Bill 5525. The bill would change the existing definitions -- at least as they relate to video recordings -- as to how many children are engaged in acts that meet the definition of child pornography. We assert that this would only serve to complicate the examination of these materials, from investigation through prosecution, as police, parties, and the Courts strain to identify the existence of a minor and determine whether the activity meets our definition of child pornography. This review will require significantly more time and resources from all involved in the process and surely will add extraordinary time and delay to not only the investigation and prosecution of these offenses.

Moreover, the amendment, adding subsection (3) to §53a-196d(a) of the General Statutes is unclear and ambiguous. It seeks to prohibit the possession of:

(A) a series of images in electronic, digital or other format, which is intended to be displayed continuously, or a film or videotape, that depicts (i) more than one child engaging in sexually explicit conduct, or (ii) more than one act of sexually explicit conduct by one or more children, or (B) any combination of a (i) series of images in electronic, digital or other format, which is intended to be displayed continuously, (ii) film, or (iii) videotape, which series, film or videotape each depicts a single act of sexually explicit conduct by one child. (Emphasis added).

The use of the term “any combination” is ambiguous in that it is unclear if the authors of Raised Bill 5525 intended this to mean that a combination of the listed factors is required or simply more than one of the listed criteria. In other words, if there were *two* of the *same* forms, would that be sufficient? This language in Raised Bill 5525 is unclear, would only lead to confusion and perhaps misinterpretation, and would surely not give lawful notice to the public as to what is prohibited under the law.

The proposed legislation is also flawed with respect to the amendments to §53a-196g of the General Statutes providing for affirmative defenses to the child pornography statutes. Raised Bill 5525 excludes a “series of images in electronic, digital or other format which is intended to be displayed continuously, or a film or videotape,” but permits the possession of “fewer than three visual depictions” as an affirmative defense. The amendment therefore allows an individual to assert an affirmative defense if they have two images, but may not do so if they have one video, regardless of how short it may be. This is inconsistent and punishes the latter violation significantly and unnecessarily more harshly than the former.

The CCDLA recognizes that child pornography is a horrible social ill that affects many children throughout the world. Unfortunately, the proposed law offers nothing that will alter the course of the exchange of these materials. If enacted, however, it will remove much of the discretion of our Judges to handle these cases in a fair and meaningful way and likely will serve

to increase Connecticut's prison population with non-violent offenders. Rather than adding new ways to obtain a mandatory minimum sentence and warehousing these offenders, we should be seeking new avenues for prevention and rehabilitation.

CCDLA respectfully opposes Raised Bill 5525 for the reasons provided.



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