

Education Committee

JOINT FAVORABLE REPORT

Bill No.: HB-5170

AN ACT CONCERNING STUDENTS' RIGHT TO PRIVACY IN THEIR MOBILE

Title: ELECTRONIC DEVICES.

Vote Date: 3/23/2018

Vote Action: Joint Favorable Substitute

PH Date: 2/26/2018

File No.: 308

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SPONSORS OF BILL:

Education Committee

REASONS FOR BILL:

HB 5170 creates a standard for determining when a public school administrator can conduct a search of a student's personal mobile electronic device to access data or other content stored on or accessed from the device (last session's HB 7154). Current case law holds that student searches by school administrators are subject to the Fourth Amendment and that reasonable cause is required before a student or the student's personal effects can be searched.

It bans a school employee from taking custody of a student's personal device in order to search it or to compel a student to provide access to it unless the device is on school property or is being used at a school-sponsored activity and the school employee has a reasonable suspicion that the student: (1) has violated an applicable educational policy and the device contains evidence of the suspected violation or (2) poses a risk of imminent personal injury to him or herself or others.

It limits the search to finding evidence of the suspected violation or risk of imminent personal injury and requires other steps, including notifying the student and the student's parents within 24 hours of the search. It also requires each board of education to include these requirements in the publication of the rules, procedures and standards of conduct for the school district and in all student handbooks.

Substitute language (1) specifies that a device can be seized at a school-sponsored activity as well as on school grounds and (2) includes the requirement to publish the search and seizure standards in the standards of conduct and student handbooks.

RESPONSE FROM ADMINISTRATION/AGENCY:

Dianna Wentzell, Commissioner of the Department of Education:

Commissioner Wentzell testified on behalf of the Department of Education in opposition to House Bill 5170. She argued that the Department has already testified in opposition to the bill for the last two sessions and still believes that this proposal would create unnecessary confusion with federal constitutional law. She also stated that this provision limits the ability of school personnel to conduct reasonable search or take custody of a mobile phone service to deal with distraction and disruption in classrooms.

Deborah Del Prete Sullivan, Legal Counsel, Director, Division of Public Defender Services:

Ms. Sullivan testified on behalf of the Division of Public Defender Services in opposition to House Bill 5170. She argued that the bill is overly broad and would pave the way for any school employee or volunteer at a school to seize a student's electronic device. She also stated that the bill violated the state and federal constitutions and invades a student's own privacy. She stated that the bill provides a leeway for searches and seizures without warrants. Additionally, she argued that the broad definition of a "school employee" is problematic and the personnel authorized to search and seize must be narrowed. She also stipulated that a time frame within which the device should be returned must be considered. She argued that so far, there is no limitation in time as to how soon after a seizure the search must occur. Adding to constitutional issues, she asserted that there were no prohibitions on the sharing of the data or information obtained from the device. Finally, she made the argument that no implementation costs were addressed in the bill.

NATURE AND SOURCES OF SUPPORT:

Abby Anderson, Executive Director of the Connecticut Juvenile Justice Alliance:

Ms. Anderson testified on behalf of the Connecticut Juvenile Justice Alliance in support of House Bill 5170 and made some recommendations. She asserted that the legislation will protect student privacy. She argued that violations of students' privacy may give rise to school disciplinary consequences or even to the involvement of juvenile justice system where it has been shown that children of color face disproportionately more involvement with courts. She believes that the bill will bring greater clarity and uniformity so that children will less likely be referred to court unnecessarily. She further explained that the bill will require all schools in Connecticut to follow the constitutional standard set forth by the U.S. Supreme Court case *New Jersey v. T.L.O.* consequentially and rightfully protecting every student's Fourth Amendment right to be free from unreasonable searches and seizures. On another note, Ms. Anderson made three recommendations. First, she stipulated that a provision so as to protect both the student and its parent/guardian's right of privacy by notifying them before any search should be included. Secondly, she called for a provision according to which "any information and evidence discovered beyond the scope of the search is not admissible in any school disciplinary action against the student". Third, she asked for the student's mobile electronic device to be returned to the student or parent/guardian. In her conclusive statement, Ms Anderson stated that House Bill 5170 should aim at creating "a sense of uniformity across the state by requiring that all school districts include its provisions in their respective Codes of Conduct".

Patrician Buell, Superintendent in Brooklyn:

Ms. Buell testified in support of House Bill 5170. She argued that schools have the responsibility to take the necessary measures to protect children and school's staff.

Dr. Matthew J. Conway, Jr., Superintendent of Schools for Derby Public Schools:

Mr. Conway testified in support of House Bill 5170 without giving any specific reasons.

Kaley Lentini, Legislative Counsel for the American Civil Liberties Union of Connecticut:

Ms. Lentini testified on behalf of the American Civil Liberties Union of Connecticut in support of House Bill 5170 and made some recommendations. She asserted that the bill will protect students against suspicion less searches. She argued that such protection would not only uphold students' privacy and Fourth Amendment right to freedom from unreasonable search and seizure, it would also decrease the chance that a student gets involved with the criminal justice system. She stipulated that it would also help to avoid racial disparities in school discipline where it has been shown that school disciplinary action may have life-altering consequences. She recommended that the bill include additional privacy protections like that of notifying the student's parent/guardian prior to search, telling them what they expect to find. Similarly, she recommended that the student's electronic device be returned within 24 hours with the evidence of violation.

Dr. Karissa L. Niehoff, Executive Director of the Connecticut Association of Schools:

Ms. Niehoff testified on behalf of the Connecticut Association of Schools in support of House Bill 5170 and made some recommendations. She recommended one change to the language in Section 1(e) "principally shall notify ..." to be changed to "principal or other school administrator should be the principal be unavailable shall notify ...". She argued that school leaders are the ones responsible for the implementation of educational policy, for school's performances and for the daily management of schools.

Michele Ridolfi O'Neill, Connecticut Education Association Educational Issues Specialist:

Ms. O'Neill testified on behalf of the Connecticut Education Association and asked for clarifications on the working of the bill. She argued that the language should be clarified to make sure that teachers will be able to temporarily confiscate devices if a student's use is distracting, disruptive or against school policy. She also added that in the event a device is confiscated, reporting and notification requirements should not be applicable.

Leon Smith, Center for Children's Advocacy:

Mr. Smith testified on behalf of the Center for Children's Advocacy in support of House Bill 5170 and made some recommendations. He argued that with the increased access of young people to mobile electronic devices, it is imperative to ensure that students have the necessary protection from unlawful searches and invasions of privacy. He stipulated that all schools should abide by the constitutional standards established by the United States Supreme Court. He also made the argument that protecting student privacy will reduce unnecessary school disciplinary and juvenile justice system involvement. He recommended that a stronger parental notification language be included in the bill around the search of mobile electronic devices. Second, he recommended that any device searched or seized be returned to the student by the end of the day because of the reliance that parents have on

cell phones. Third, he recommended that provisions of this bill should be required in school districts' Code of Conduct.

Representative Pam Staneski:

Representative Pam Staneski testified in support of House Bill 5170 and offered the following change in language: "One line 2, line 20, line 25, line 30, line 34, and line 42 strike "Mobile" and insert "Personal mobile", this change would allow search and seizure of school-owned devices provided to students for their use without notification to parent/guardian.

NATURE AND SOURCES OF OPPOSITION:

Alejandra Bonilla, Member of the Center for Youth Leadership at Brien McMahon High; Nathalie Medero, Mayor's Youth Leadership Council at Stamford High:

Ms. Bonilla testified on behalf of the Center for Youth Leadership at Brien McMahon High as well as on behalf of the Mayor's Youth Leadership Council at Stamford High in opposition to House Bill 5170. She argued that in light of the recent school shooting in Parkland, Florida, teachers and administrators have to enforce school policy when it comes to cell phones and other devices, at the expense of some individual rights. She recommended that a "judge declare a cell phone exception to *New Jersey vs T.L.O.*, effectively requiring a warrant whenever school officials seeks to secure digital content". She further gave a dozen suggestions for the Committee to think about. Finally, she stated that both organizations believe that the searches of phones may be seen as an intrusion simply because of the amount of data they contain.

Dr. Christine Carver, Superintendent of the Bethel Public Schools:

Ms. Carver testified in opposition to House Bill 5170. She is opposed to any limitation on the control of the devices as she stipulated that the majority of the safety and security issues faced by schools begin on mobile electronic devices.

Vicki Hutchinson, Attorney, Connecticut Criminal Defense Lawyers Association:

Ms. Hutchinson testified on behalf of Connecticut Criminal Defense Lawyers Association in opposition to House Bill 5170. She stipulated that the proposed statute was vague and was a violation of constitutional protections against searches without warrants.

Erin Williamson, LCSW, MPA, Survivor Care Program Director:

Mr. Williamson testified on behalf of the Love 146 End Child Trafficking and Exploitation in opposition to the House Bill 5170. He argued that a violation of school policy does not meet sufficient grounds for children right to privacy to be violated. I asserted that it is vital that students' Fourth Amendment rights be protected. He requested that a warrant be obtained before searching a suspect's electronic device and an authorization given by legal guardians for information to be accessed and shared. He finally asserted that a student's electronic mobile device should only be searched or seized provided that the student poses an imminent risk and that the school has followed proper law enforcement procedures.

Reported by: Adeline Dubout

Date: April 9, 2018