

Legislative History for Connecticut Act

PA 14-192

HB5525

House	6570-6576	7
Senate	3464-3465, 3473, 3480-3481	5
Judiciary	2278-2279, 2281, 2287-2290, 2500, 2502, 2520-2524	14
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H – 1200

**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2014**

**VOL.57
PART 20
6540 – 6911**

the Clerk will take the tally.

Will the Clerk please announce the tally.

THE CLERK:

Senate Bill 412 as amended by Senate "A" and in
concurrence with the Senate.

Total Number Voting	146
Necessary for Passage	74
Those voting Yea	120
Those voting Nay	26
Those absent and not voting	5

DEPUTY SPEAKER BERGER:

The bill, as amended, passes in concurrence with
the Senate.

Will the Clerk please call House Calendar Number
361.

THE CLERK:

On page 12, House Calendar 361, Favorable Report
of the joint standing Committee on Judiciary,
Substitute House Bill 5525, AN ACT CONCERNING CHILD
PORNOGRAPHY.

DEPUTY SPEAKER BERGER:

Representative Ritter, sir.

REP. RITTER (1st):

Thank you, Mr. Speaker.

I move acceptance of the joint committee's
Favorable Report and passage of the bill.

DEPUTY SPEAKER BERGER:

The motion before the Chamber is acceptance of
the joint committee's Favorable Report and passage of
the bill. Will you comment further, Representative?

REP. RITTER (1st):

Yes, Mr. Speaker.

And before I get to the amendment, this is not
the most apt title; it really should talk about how we
are enhancing criminal penalties for the possession of
child pornography in certain instances.

And essentially what this bill does -- the -- the
underlying bill prior to the amendment -- is it -- it
takes into account technology and how it's evolving
and so that our statutes that govern the possession of
child pornography and the penalties thereof don't
necessarily deal with digital and electronic images.
This is an update to that, at the recommendation of
the Department of Criminal Justice.

And I also believe the Clerk is in possession of
an amendment, LCO Number 5598. I'd ask the Clerk
call, that I be granted leave of the Chamber to
summarize.

DEPUTY SPEAKER BERGER:

Yes, sir. Will the Clerk please call LCO Number 5598; will be designated House Amendment "A"

THE CLERK:

House "A," LCO 5598, as introduced by Representative Fox, et al.

DEPUTY SPEAKER BERGER:

Representative seeks leave of the Chamber to summarize the amendment. Is there objection to summarization? Is there objection?

Seeing none, please proceed with summarization, sir.

REP. RITTER (1st):

Yes, Mr. Speaker, and I do hope that I'm holding my microphone in a manner that is, would please Representative Williams who's coming here to make sure that it's held a certain way.

I'd like to thank Representative Fox, Klarides, and O'Neill for their work on this amendment. This amendment essentially, again, just adds onto the underlying bill, which I discussed earlier, that if a registered sex offender is going to be released and move into a municipality, that notice be provided to the chief executive officer of that municipality. I

would point my colleagues to lines 109 to 115 for those changes. So the Department of Emergency Services and Public Protection would send that notice.

And I move adoption, Mr. Speaker.

DEPUTY SPEAKER BERGER:

Motion before the Chamber is adoption of House Amendment Schedule "A."

Will you comment further on the amendment before us?

Representative Rebimbas.

REP. REBIMBAS (70th):

Thank you, Mr. Speaker, and good afternoon to you.

DEPUTY SPEAKER BERGER:

Good afternoon, madam.

REP. REBIMBAS (70th):

Mr. Speaker, I rise in support of the amendment that's before us, and I'd like to take the opportunity, also, to thank Representative O'Neill for his clarifying language regarding the technology that's used and how it's going to be then implemented and analyzed, as well as certainly, again, Representative Fox and Representative Klarides for the work in combining this amendment and making the

underlying bill that much better.

With that said, it's certainly a bill that's necessary, because what we're doing is we're making sure that the punishment actually fits the crime, and we're also updating the different technology and how it's utilized in the, in this type of crimes before us. So it's a very good amendment that makes a bill that much better, and I urge my colleagues to support it.

DEPUTY SPEAKER BERGER:

Thank you, madam.

Will you remark further on the amendment before us? Will you remark further on the amendment before us?

In not, I'll try your minds. All those in favor of the amendment before us, signify by saying Aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER BERGER:

Opposed?

The ayes have it. The amendment is adopted.

Will you comment further on the bill before us?
Will you comment further on the bill as amended,
before us?

Seeing none, staff and guests please come to the well of the House. Will members please take your seats. The machine will be open.

THE CLERK:

The House of Representatives is voting by roll;

members to the Chamber, please. The House of Representatives is voting by roll; members to the Chamber, please.

DEPUTY SPEAKER BERGER:

Have all the members voted? Have all the members voted? Have all the members voted?

If all the members have voted, you check the board to see if your vote has been properly cast. If all the members have voted, the machine will be locked. And the Clerk will take the tally.

Will the Clerk please announce the tally.

THE CLERK:

Mr. Speaker, House Bill 5525 as amended by House "A."

Total Number Voting	147
Necessary for Passage	74
Those voting Yea	147
Those voting Nay	0
Those absent and not voting	4

DEPUTY SPEAKER BERGER:

The bill, as amended, passes.

Will the Clerk please call House Calendar Number
493.

THE CLERK:

On page 23, Calendar 493, Favorable Report of
the joint standing Committee on Appropriations,
Substitute Senate Bill Number 10, AN ACT CONCERNING
COPAYMENTS FOR BREAST ULTRASOUND SCREENINGS.

DEPUTY SPEAKER BERGER:

Representative Megna, the esteemed --

A VOICE:

Where'd she go?

DEPUTY SPEAKER BERGER:

Sorry, Representative; we're going to continue.

The -- the Chair will recognize the esteemed
Chair of the Insurance and Real Estate, in the House,
Representative Megna, sir.

REP. MEGNA (97th):

Thank you, Mr. Speaker.

Mr. Speaker, I move acceptance of the committee's
joint and Favorable Report and passage of the bill, in
concurrence with the Senate.

DEPUTY SPEAKER BERGER:

**S - 679
CONNECTICUT
GENERAL ASSEMBLY
SENATE**

**PROCEEDINGS
2014**

**VETO
SESSION**

**VOL. 57
PART 11
3246 – 3508**

pat/gbr
SENATE

279
May 7, 2014

SENATOR LOONEY:

And Calendar Page 40, Madam President, Calendar 475, Joint Resolution Number 20, move to place on the Consent Calendar.

HJ 20

THE CHAIR:

So ordered, sir.

SENATOR LOONEY:

Calendar Page 40, Calendar 475, Joint Resolution Number 26, move to place on the Consent Calendar.

HJ 26

THE CHAIR:

So ordered, sir.

SENATOR LOONEY:

And Calendar Page 40, Calendar 532, Joint Resolution Number 42, move to place on the Consent Calendar.

HJ 42

THE CHAIR:

So ordered, sir.

SENATOR LOONEY:

Thank you, Madam President. Madam President, there are also two items on Calendar, on Agenda Number 1 under Business from the House and previously adopted the Agenda, would ask for suspension for the purpose of taking up two items on Agenda Number 1 for the purposes of placing them on the Consent Calendar.

THE CHAIR:

Seeing no objection, so ordered, sir.

SENATOR LOONEY:

Thank you, Madam President. The first under Business from the House is Substitute House Bill Number 5525, move to place that item on the Consent Calendar.

THE CHAIR:

So ordered, sir.

SENATOR LOONEY:

Thank you, Madam President. And the second item under disagreeing actions on Senate Agenda Number 1 is Substitute Senate Bill Number 152. Move to place this item on the Consent Calendar.

THE CHAIR:

So ordered, sir.

SENATOR LOONEY:

Thank you, Madam President. If we might stand at ease for just a moment to verify any additional items.

THE CHAIR:

Senator, can we look at Page 24 please and see if you have anything that you wanted to put on Consent on Page 24, please.

SENATOR LOONEY:

Not on this list. I believe we had added some, may have added some earlier, but on this list, I don't have any from Page 24, Madam President.

THE CHAIR:

Okay, thank you.

SENATOR LOONEY:

Okay, thank you.

Madam President.

THE CHAIR:

Senator Looney.

pat/gbr
SENATE

288
May 7, 2014

SENATOR LOONEY:

Madam President.

THE CHAIR:

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President. One additional item to place on the Consent Calendar at this time. It's Calendar Page 25, Calendar 562, Substitute for House Bill Number 5466. I move to place that item on the Consent Calendar.

THE CHAIR:

So ordered, sir.

SENATOR LOONEY:

Thank you, Madam President. Now, Madam President, if the Clerk would list the items on the Consent Calendar so we might proceed to a vote.

THE CHAIR:

Mr. Clerk.

THE CLERK:

We have items from previously adopted Senate Agendas, House Bill 5525, Senate Bill 152, House Bill 5528, House Bill 5311.

On Calendar Page 5, Calendar 327, House Bill 5099.

Also on Page 5, Calendar 330, House Bill 5441.

On Page 6, Calendar 341, House Bill 5117.

Calendar 338, House Bill 5323.

Calendar 344, House Bill 5442.

pat/gbr
SENATE

295
May 7, 2014

SENATOR LOONEY:

If we might pause for just a moment to verify a couple of additional items.

Madam President, to verify an additional item, I believe it was placed on the Consent Calendar and Calendar Page 30, on Calendar Page 30, Calendar 592, Substitute for House Bill 5476.

THE CHAIR:

It is, sir.

SENATOR LOONEY:

It is on? Okay. Thank you. Thank you, Madam President. If the Clerk would now, finally, Agenda Number 4, Madam President, Agenda Number 4 one additional item ask for suspension to place up on Agenda Number 4 and that is, ask for suspension to place on the Consent Calendar an item from Agenda Number 4.

THE CHAIR:

Seeing no objection, so ordered, sir.

SENATOR LOONEY:

Thank you, Madam President, and that item is Substitute House Bill Number 5566 from Senate Agenda Number 4.

Thank you, Madam President. If the Clerk would now, if we might call for a vote on the Consent Calendar.

THE CHAIR:

Mr. Clerk. Will you please call for a Roll Call Vote on the Consent Calendar. The machine will be opened.

THE CLERK:

An immediate Roll Call has been ordered in the Senate.

pat/gbr
SENATE

296
May 7, 2014

An immediate Roll Call on Consent Calendar Number 2 has been ordered in the Senate.

THE CHAIR:

If all members have voted, all members have voted, the machine will be closed. Mr. Clerk will you please call the tally.

THE CLERK:

Consent Calendar Number 2.

Total number voting	36
Necessary for adoption	19
Those voting Yea	36
Those voting Nay	0
Those absent and not voting	0

THE CHAIR:

The Consent Calendar passes. Senator Looney.

SENATOR LOONEY:

Thank you, Madam President. Two additional items to take up before the, our final vote on the implementer. If we might stand for just, for just a moment.

The first item to mark Go is, Calendar, to remove from the Consent Calendar, Calendar Page 22, Calendar 536, House Bill 5546. If that item might be marked Go.

And one additional item, Madam President, and that was from Calendar, or rather from Agenda Number 4, ask for suspension to take it up for purposes of marking it Go, that is House Bill, Substitute for House Bill 5417. Thank you, Madam President.

THE CHAIR:

Seeing no objection, so ordered, sir.

SENATOR LOONEY:

**JOINT
STANDING
COMMITTEE
HEARINGS**

**JUDICIARY
PART 5
1904 – 2391**

2014

testimony and I do think this is something we should do as soon as possible.

I also understand the arguments we've heard here about narrowing the distance between, for the enforcement or the acceleration of penalties for dealing drugs around schools and projects, but I hope you know, it's the irony of the fact that today we're hearing testimony about saving lives with this Narcan as being heard on the same day that we're trying to reduce the distance upon which we're going to have enforce, heightened penalties for dealing drugs around schools isn't lost on everybody here.

I know it's a tough problem. We want to protect our kids, but based on all the research I've done of late, this heroin epidemic is scary. We heard a doctor testify that this is the second epidemic that he's been involved with since the seventies and it's out of control, so I do greatly appreciate your testimony here today and thank you, Chair, for your indulgence on my comments.

SENATOR COLEMAN: Thank you. Anyone else with questions or comments? If not, thank you, Mr. Tootle. Jillian Gilchrest, to be followed by Richard Rogue.

JILLIAN GILCHREST: Good afternoon, Senator Coleman, Representative Fox and members of the Judiciary Committee. My name is Jillian Gilchrest. I'm the Director of Public Policy and Communication for Connecticut Sexual Assault Crisis Services. CONNSACS is the state's coalition of nine community-based sexual assault crisis programs. Our mission is to end sexual violence and ensure high quality comprehensive and culturally competent sexual assault victim services.

HB 5449

HB 5525

Thank you for the opportunity to testify on two bills today, House Bill 5449 AN ACT CONCERNING RESIDENCY RESTRICTIONS FOR REGISTERED SEXUAL OFFENDERS and House Bill 5525 AN ACT CONCERNING CHILD PORNOGRAPHY.

As advocates, we are concerned any time a convicted sex offender is released into the community. Ensuring our children are safe is of the utmost priority to all of us and we applaud the Committee for promoting community safety and addressing child sexual abuse.

Actually, I started my professional career as a child advocate at the Sexual Assault Crisis Center of Eastern Connecticut where I saw over 400 children and their family members.

It is important to note that Connecticut already has an innovative treatment model for first conviction sexual offenders. Every offender undergoes a comprehensive risk assessment before being released into the community, and supervising officers work with victim advocates and treatment providers to monitor an offender's progress.

Many offenders already have housing approved as a condition of their release. Particularly dangerous offenders who pose a risk to children are already prohibited from living near schools, parks, daycare centers and other places where children congregate.

While well intended, CONNSACS must oppose House Bill 5449, which would prohibit certain sexual offenders from residing within 1,000 feet of an elementary school, secondary school or daycare facility.

Finally, residency restrictions give a false impression that children are most likely to be abused by predatory strangers, even though we know that 95 percent of offenders are known to their victim.

Taking extreme measures to keep offenders away from schools or daycare centers may give the public a false sense of security.

I'll just wrap up by saying we are here in support of 5525, AN ACT CONCERNING CHILD PORNOGRAPHY, which we believe makes a technical change to update Connecticut's current law regarding possession of child pornography. We believe that every time an image is share or viewed it is a victimization and should be a crime. Thank you.

SENATOR COLEMAN: Thank you. Are there questions?
Chairman Fox.

HB5449
REP. G. FOX: Thank you, Mr. Chairman and thank you for being here and for your testimony today, and I know that we've all worked closely with CONNSACS on a number of issues over the years and with respect to this proposal today, and I'm talking about the zone with respect to those registered as sex offenders.

So just to be clear, it's your testimony that this in other areas has actually backfired?

JILLIAN GILCHREST: Yes, and that we actually already have a model in place here in Connecticut where every convicted sex offender before released into the community has to take a risk assessment and as terms of that release, if they are deemed by that risk assessment to be at risk of sexually assaulting children, then they would already have these residency restrictions put upon them.

SENATOR COLEMAN: Thank you. And are there questions? Doesn't appear to be any questions at this point in time.

TYLER WILLIAMS: Thank you.

SENATOR COLEMAN: Thank you. Michael Gailor to be followed by Marshall Segar.

MICHAEL GAILOR: Good afternoon, Senator Coleman, Representative Fox, members of the Judiciary Committee. My name is Michael Gailor. I'm from the Division of Criminal Justice and I'm here to talk on behalf of House Bill 5525 AN ACT CONCERNING CHILD PORNOGRAPHY. Simply put, the purpose of this bill is to try to deal with a problem that we have with the current child pornography bill, and that is that videotapes or their digital equivalent are simply treated as a one visual image regardless of how long the videotape is or what's contained in that videotape.

So you could have a two-hour long videotape depicting numerous children engaged in all kinds of deviant behavior and it would be counted the same as one still photograph. That just doesn't seem right, and it isn't right and it's not, the statute that we have doesn't really address the conduct that we're talking with yet.

What we have proposed is sort of based on what the federal system does. What the federal system does, they have, their statute provides that child pornography, possession of child pornography is punishable by from one to ten years, and they treat each videotape as 75 images, which for sentencing purposes results in a two-step increase in the possible sentence a person receives.

So what we tried to do with the first part of the statute is mirror that, by making the possession of any kind of videotape involving child pornography be a child pornography in the second degree.

But the federal statute then provides that the two-step increase is where it stays and every videotape is considered as 75 images unless it is substantially longer than five minutes.

We thought about going that way and making this recommendation. However, we thought that that really didn't address the conduct either because a lot can happen in a five-minute videotape. We thought probably the better focus and what we have proposed here, is to deal with the victims, the people who are victimized by this, the children.

So if more than one child is depicted in a video in one of these prohibited acts, then it should be child pornography in the first degree.

Or if it involves more than one child involved in an act, then it should be child pornography in the first degree.

So that's simply what we're trying to do here is address that. The problem that comes up in videotapes and one of the reasons why the federal authorities chose 75 images is because it's very hard to figure out what could constitute an image in a videotape.

One second of film basically in ordinary circumstances, constitutes 24 separate still images. If you get 10 seconds of film, you would have 240 images. We didn't think it was appropriate to deal with each second of film to

count each, and I apologize if you want me to stop at this, I will.

SENATOR COLEMAN: No, please continue.

MICHAEL GAILOR: Okay. We thought that it wouldn't be appropriate to count each still image that makes up one second of film as a separate image. We thought it was probably more appropriate to follow the federal model, which was to group a certain, the videotapes of a certain character with something that would put it in kiddy porn, excuse me, child pornography in the second degree.

And again, we thought that probably the best approach thereafter is to focus on the victims and if more than one child is victimized or one child is shown being victimized more than once, to make it child pornography in the first degree.

The rest of the statute deals basically with trying to deal with the intricacies of dealing with videotapes and their digital equivalents. In this day and age when technology keeps getting a little bit ahead of us, we're trying to keep up with that, and videotapes used to be the norm. Now there are computer-generated images and other types of things that are equivalent of videotapes, so that's what the statute is trying to address.

So with that, I'll take any questions.

SENATOR COLEMAN: Thank you. Are there questions?
Chairman Fox.

REP. G. FOX: Thank you, Chairman Coleman, and thank you for your testimony today. I have had this issue discussed with me a few times in recent years and it's something that I'm glad the

Office of Chief's State's Attorney has presented it this year because it is something that has, I believe does come up when you're trying these cases.

But right now, just to make sure that we understand the issue, if there is a film that depicts child pornography as you describe it, a two-hour film, that could still only be counted as a single image or would be charged as a single image photograph?

MICHAEL GAILOR: That's correct.

REP. G. FOX: Okay. That's the issue we're trying to address here.

MICHAEL GAILOR: That's the issue exactly.

REP. G. FOX: Thank you.

SENATOR COLEMAN: Are there other members with questions or comments? Seeing none, thank you very much.

MICHAEL GAILOR: Thank you.

SENATOR COLEMAN: Marshall Segar to be followed by Paula Pearlman.

MARSHALL SEGAR: Good afternoon. First let me begin by saying thank you to Senator Coleman, Representative Fox and members of the Judiciary Committee for the opportunity to come before you. My name is Marshall Segar. I'm an attorney and I represent the Judicial Professional Employees Union that includes probation officers.

You heard Carmen Roda's testimony. He is a member of the union.

SB 387
HB 5125

**JOINT
STANDING
COMMITTEE
HEARINGS**

**JUDICIARY
PART 6
2392 – 2883**

2014



Connecticut Sexual Assault Crisis Services, Inc.

96 Pitkin Street · East Hartford, CT 06108 · Phone: 860-282-9881 · Fax 860-291-9335 · www.connsacs.org

Testimony of Connecticut Sexual Assault Crisis Services
HB 5449, AAC Residency Restrictions for Registered Sexual Offenders
HB 5525, AAC Child Pornography

Jillian Gilchrest, Director of Public Policy and Communications
Judiciary Committee, March 12, 2014

Senator Coleman, Representative Fox, and members of the Judiciary Committee, my name is Jillian Gilchrest and I am the Director of Public Policy & Communication for Connecticut Sexual Assault Crisis Services (CONNSACS). CONNSACS is the coalition of Connecticut's nine community-based sexual assault crisis services programs. Our mission is to end sexual violence and ensure high quality, comprehensive and culturally-competent sexual assault victim services.

During our last fiscal year, certified sexual assault victim advocates provided hospital, police and court accompaniment, support groups, individual counseling, 24/7 hotline support, information and referrals to over 7,000 victims and survivors of sexual violence throughout the state.

HB 5449, AAC Residency Restrictions for Registered Sexual Offenders

As advocates, we are concerned anytime a convicted sex offender is released into the community. Ensuring that our children are safe is of the utmost priority to us all, and we applaud the committee for promoting community safety and addressing child sexual abuse. While well intended, CONNSACS must oppose HB 5449, which would prohibit certain sexual offenders from residing within one-thousand feet of an elementary school, secondary school, or day care facility, based on our experience and the research about unintended consequences of similar legislation that has passed in other states, such as California.

Connecticut actually has an innovative treatment model for post-conviction sexual offenders. Every offender undergoes a comprehensive risk assessment before being released into the community, and supervising officers work with victim advocates and treatment providers to monitor an offender's progress. Offenders who are on probation and parole must abide by a range of conditions based on their risk assessments. Because many offenders must have their housing approved as a condition of release, particularly dangerous offenders who pose a risk to

For all of these reasons, CONNSACS opposes the passage of HB 5449. We would be happy to provide interested members of the Committee with additional research and information about residency restrictions.

HB 5525, AAC Child Pornography

CONNSACS would also like to express support for HB 5525, which makes a technical change to update Connecticut's current law regarding the possession of child pornography to clearly define an image in an electronic or digital format. Every time an image is shared or viewed it is a victimization and should be a crime.

Thank you for the opportunity to testify.

Jillian Gilchrest
Director of Public Policy & Communication
jgilchrest@connsacs.org

Langan and Levin *Recidivism of Prisoners Released in 1994*. Bureau of Justice Statistics, US Department of Justice. Washington, DC, 2002

"Jessica's Law needs a major overhaul" Editorial. The Sacramento Bee 16 November 2010

CCDLA
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**Connecticut Criminal Defense
Lawyers Association**

Waterbury, CT 07621-1776
(860) 283-5070 Phone/Fax
www.ccdla.com

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.



Ioannis Kaloidis, Esq.
CCDLA Member

page 13
Line 15

State of Connecticut
DIVISION OF CRIMINAL JUSTICE

TESTIMONY OF THE DIVISION OF CRIMINAL JUSTICE

IN SUPPORT OF:

H.B. NO. 5525: AN ACT CONCERNING CHILD PORNOGRAPHY

JOINT COMMITTEE ON JUDICIARY
March 12, 2014

The Division of Criminal Justice respectfully recommends the Committee's JOINT FAVORABLE REPORT for H.B. No. 5525, An Act Concerning Child Pornography. The Division wishes to express its appreciation to the Committee for raising this bill, which is among our 2014 Legislative Recommendations.

The purpose of this bill is two-fold: (1) to update the statutes to reflect the current technology through which child pornography is produced and distributed; and (2) to more properly address the severity of the criminal conduct involved and adjust the corresponding penalties.

As is the case with so many other facets of today's society, the laws concerning the possession of child pornography no longer reflect advances in technology. While videotape was once considered a technological wonder, it is rapidly becoming obsolete. Such is also the case to large extent with what we call photographs. Digital images and digital recordings are now the norm. H.B. No. 5525 revises the child pornography statutes to reflect this.

The second aspect of the bill deals with how the images at question in a child pornography case are essentially counted. The problems with the existing law are best explained by offering an example. Under our current law, a videotape - or the same material produced as a digital file - is considered one "image." Thus, the possession of such material - regardless of the duration or the number of individual incidents or acts depicted on the recording - constitutes Possession of Child Pornography in the Third Degree. As such a two-hour video in which numerous children are assaulted numerous times only constitutes a class D felony.

By the same token, under the current law the possession same material as individual images -- essentially what we once called a photograph or print - would be counted on the basis of the number of individual images and the degree of Possession of Child Pornography determined accordingly. At twenty images, the crime becomes possession in the second degree, a class C felony punishable by up to ten years, and at fifty images it becomes possession in the first degree, a class B felony with a maximum penalty of 20 years in prison.

The federal criminal justice system addresses this issue in its sentencing guidelines. The federal sentencing guidelines count every video containing child pornography as 75 images and subjects the person possessing the video to a two-level increase, unless the recording is substantially longer than five minutes in duration in which case the guideline range is subject to an even higher increase.

The Division of Criminal Justice has examined the federal approach and believes that while it is appropriate to treat videos (or their digital equivalents) more severely than still photographs, classifying all videos that are not substantially longer than five minutes the same is not appropriate. The Division believes a more appropriate approach is to assess the severity of the conduct involved in terms of the number of victims and/or the number of acts depicted on the videotape, digital file or other format involved. H.B. No. 5525 bases the penalty on the number of acts and/or number of victims, which is a more appropriate means of assessing the severity of the criminal conduct involved and establishing the corresponding penalty.

The Division recognizes the difficulty in drafting specific language regarding these issues. What would appear to be a simple matter of counting images, files, etc., can become quite complicated when translated into statutory language. For this reason we stand ready to work with the Committee and interested parties to clarify the language, if necessary.

In conclusion, the Division respectfully requests and recommends the Committee's JOINT FAVORABLE REPORT for H.B. No. 5525. We would be happy to provide any additional information the Committee might require or to answer any questions you might have. Thank you for providing us with this opportunity to present this legislation on this important matter.