



The Judiciary Review

Report from the Senate Judiciary Committee (D)

JAY COSTA JR., DEMOCRATIC CHAIRMAN

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May 2003

Costa Legislation Receives Favorable Review at Judiciary Committee Public Hearing

On Monday, May 12, the Senate Judiciary Committee conducted a public hearing to review Senate Bill 170 introduced by Senator Jay Costa, Jr. The legislation addresses a new tool used by child pornographers: the use of "virtual" child images either by the manipulation of several existing images or the creation of wholly computer generated images of what appears to be a child. "Virtual child" pornography was the subject of a recent United States Supreme Court decision reviewing the 1996 Child Pornography Protection Act. *Ashcroft v. Free Speech Coalition*.

Like the 1996 federal act, Costa's legislation is intended to close a loophole that may be an increasing problem in the prosecution of such cases. Current technology enables a person to manipulate innocuous pictures of children to create images by posing such subjects in a lavacious or lewd manner. Further, the technology enables an individual to merge pictures of several people to create a singular, seamless image and even to create wholly computer-generated images that are life-like. In all cases, such pornographers are not using actual children to create the image and thereby possibly avoiding prosecution. However as noted at the public hearing, these materials are used by pedophiles for several reasons; to whet their sexual appetites and to show children that engaging in sexual activities is not unusual. It's also used as a tool for luring children into sexually

exploitive situations by lowering a child's inhibitions.

However, unlike the federal statute, Senate Bill 170 requires that the *Miller* obscenity standard be applied to virtual images. The United States Supreme Court has previously decided that child pornography is not entitled to First Amendment protection regardless of whether such materials are deemed to be obscene. In *Ashcroft*, the United States Supreme Court found the Child Pornography Prevention Act's application to images that "appear to be a child" or virtual images of a child to be unconstitutionally overbroad and arguably applicable to artistic and literary materials such as contemporary cinematic productions and classics such as *Romeo and Juliet*.

The bill was endorsed by the Pennsylvania District Attorneys Association represented by District Attorney Stephen Zappala, Jr. and District Attorney Mark Zimmer of Wayne County who chairs the association's Child Abuse Coalition. Additionally, Professor Ken Gormely instructed the committee on the constitutional history of pornography jurisprudence and provided constructive assistance with the drafting of the legislation. The Attorney General's Office and the American Civil Liberties Union contributed with information concerning criminal use of the Internet and its regulation. Last, Dr. Eugene Greenwald Medical Director for the Children's Resource Center, Pinnacle Health System provided the

perspective of a medical clinician who interviews and counsels child victims and serves as a witness in sex offender prosecutions.

Civil Commitment of Juvenile Sex Offenders

■ Senate Bill 521 Printer's No. 857

The legislation amends Title 42 of the Pennsylvania Consolidated Statutes by adding Chapter 64—Commitment of Sexually Violent Delinquent Children and Young Adults. The procedures apply to a child who was declared delinquent for conduct constituting rape, involuntary deviate sexual intercourse, sexual assault or incest and committed to an institution approved by the Department of Public Welfare pursuant to section 6352.

Thirty days prior to a sexually violent delinquent child's 20th birthday, a probation officer is required to notify the State Sexual Offender Assessment Board and assist the board in obtaining access to the child to perform an assessment. The Board must perform an assessment of the child and submit its report to the court within 90 days of the child's 20th birthday with a copy to the district attorney, the child's probation officer and counsel for the child. The court must conduct a dispositional review hearing not later than 180 days before the child's 21st birthday and consider the assessment report, treatment information and any other

relevant information. If evidence indicates that the child may be subject to additional civil commitment, proceedings under Chapter 64 commence.

Chapter 64 authorizes court ordered involuntary commitment of a sexually violent delinquent child who is in need of commitment due to a mental abnormality or personality disorder that results in serious difficulty in controlling dangerous sexual behavior. Procedures under Chapter 64 are commenced by the Juvenile Probation Office filing a petition that must include the evaluation of the State Sexual Offender Assessment Board. The court must schedule a public hearing directing the child to appear at such hearing with 30 days notice and advise of the right to counsel and right to an independent expert. Chapter 64 provides indigent rights for counsel and expert witness for the child. A determination by clear and convincing evidence that the child is in need of commitment results in an order committing the child to an institution designated by the Department of Public Welfare.

The initial period of commitment is one year with annual evaluations that subject the child to additional one year commitments not to exceed ten. At any time during the period of the commitment, the director of a commitment facility may conclude that the child no longer suffers from a mental abnormality or personality disorder that results in serious difficulty in controlling dangerous sexual behavior and petition the court for a hearing for such determination. The Department of Public Welfare is required to provide a secure facility for control, care and treatment of sexually violent delinquent children committed pursuant to chapter 64. The Pennsylvania State Police are required to maintain sexually violent delinquent children in the statewide database of sex offenders.

*Current Status: Senate Calendar—
Second Consideration*

Divorce Code

■ Senate Bill 95 Printer's No. 94

This legislation contains revisions to the Domestic Relations Code relating to Divorce actions recommended by the Joint State Government Commission Advisory Committee on Domestic Relations Law. The report details the changes to the Domestic Relations Code relating to premarital agreements, bifurcation of divorce and support proceedings, survival of divorce actions after the death of one party, increases in value of non-marital post-separation enhancements of a defined benefit plan, clarification of tax ramifications on property divisions, interim equitable distribution awards, increasing the threshold amount from \$500 to \$1,000 to sustain a petition for the creation of a constructive trust for undisclosed assets, presumptive guidelines for the amount and duration of alimony and alimony pendente lite, credits against alimony award for previously paid alimony pendente lite, consideration of marital misconduct prior to final separation on the post-separation

economic circumstances of the parties, and statutory rules regarding modification and termination of an alimony.

*Current Status: Senate Calendar—
Second Consideration*

Executive Nominations

■ Senate Bill 356 Printer's No. 427

The Senate Judiciary Committee reported the nominations of Glenn C. Bronson, Esquire, Ramy I. Djerassi, Esquire and Nina W. Padilla, Esquire to appointment as Judges of the Court of Common Pleas, Philadelphia County.

Bills Previously Reported in the Judiciary Review.

■ House Bill 266 and House Bill 267

Amending the Controlled Substance Act and the Crimes Code respectively and providing penalties for trafficking in "Ecstasy."

*Previously Reported—April 2003
Current status: Governor's Desk*



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