ACLU Connecticut

Legislative Testimony
765 Asylum Avenue, First Floor
Hartford, CT 06105
860-523-9146
www.acluct.org

Written Testimony Supporting House Bill 5170, An Act Concerning Students' Right to Privacy in Their Mobile Electronic Devices, With Additional Privacy Protections

Senator Boucher, Senator Slossberg, Representative Fleishmann, and distinguished members of the Education Committee:

My name is Kaley Lentini, and I am legislative counsel for the American Civil Liberties Union of Connecticut (ACLU-CT). I am here to testify in support of House Bill 5170, An Act Concerning Students' Right to Privacy in Their Mobile Electronic Devices, with proposed amendments to provide additional privacy protections.

The ACLU of Connecticut strongly supports liberty and justice for all. This includes the right to privacy and freedom from baseless searches of one's personal information. Students do not check their rights at the schoolhouse door. Requiring a student to sacrifice his or her constitutional right to privacy in order to obtain equal access to education is not only wrong; it is unworthy of a twenty-first century educational system.

Today's schools and students must navigate technology in myriad ways, including through students' use of personal devices during lunch or other breaks. Technology presents an opportunity to prepare Connecticut's kids for the future, but it also presents privacy concerns if schools use it as another on-ramp for the school-to-prison pipeline. House Bill 5170 prohibits unlawful searches of students' electronic devices, which helps to protect students' constitutional rights, and the ACLU-CT believes it could be improved with amendments to further protect these rights.

Protecting students from suspicionless searches will prevent schools from searching students' devices without reason. Access to a young person's cellphone, tablet, or laptop means access to their private worlds. These devices are like backpacks, if backpacks contained every note a child had passed to a friend, every photo they had taken, every phone call they had made to their parents, and more. Before searching an actual backpack, however, school officials are required to have specific, reasonable suspicion that a student has broken the law or a school rule. In *New Jersey v. T.L.O.* (1985), the United States Supreme Court determined that students are protected under the Fourth Amendment from unreasonable searches and seizures by public school officials. The Court ruled that before searching a student, a school official needs "reasonable suspicion," a specific, articulable reason to believe the student has broken a law or school rule. This rule has long been implemented for backpacks, but many schools do not abide by these privacy principles when

it comes to electronic devices, which hold much far more information. The legal standard set out in *New Jersey v. T.L.O.* must be memorialized into legislation, and it must be clear that the standard articulated in the decision also applies to students' personal electronics. Connecticut law must keep up with technology and Constitutional jurisprudence.

Right now, however, Connecticut schools have a patchwork of unequal privacy policies. West Haven High School, for instance, states that students' "electronic devices may be searched as part of any school investigation," and that its more than 1,800 students "should have no expectation of privacy as to any images, messages, or other files such devices may contain." Other school districts have flawed policies that purport to give school administrators the ability to demand students' passwords for private personal devices without cause. These are grave violations of students' privacy rights.

Preventing schools from conducting suspicionless searches of students' devices would not only uphold students' privacy and Fourth Amendment right to freedom from unreasonable search and seizure; it could also decrease the chance that a student enters the criminal justice system and help to avoid racial disparities in school discipline. In 2016, statewide data from the State Department of Education found that Black and Latino boys and girls were more likely to be suspended or expelled from school, and that white students received less severe punishments when they were suspended or expelled. The majority of suspensions and expulsions overall were for non-violent school policy violations. Similarly, in 2013, Connecticut Voices for Children found that 2,214 Connecticut students were arrested at school, and arrest rates were higher among minority, special education, and low-income students. Nearly one in ten students was arrested for a non-violent violation of school policy, such as using profanity.

Without protections in place, one could easily imagine a school administrator conducting random searches of students' cellphones and finding profane language or another school policy violation. Even if that discovery only led to a suspension or expulsion, rather than arrest, evidence has shown time and again that days away from school due to disciplinary action increase a child's risk of entering the criminal justice system later in life. Such potentially life-altering consequences should, at the very least, be based on reasonable suspicion, not random acts of intrusion.

Though the ACLU-CT applauds the committee for taking up the issue of student privacy, we believe the bill could be strengthened with the inclusion of additional privacy protections. We urge the committee to include a provision to prohibit a school administrator from searching a student's personal mobile electronic device unless they have first notified the student's parent or guardian that the device will be searched, of the suspected violation and the explanation of the reasonable suspicion that gave rise to an employee taking the device, and what the school administrator expects to find on the device, unless a school employee has reasonable suspicion that the student poses a risk of imminent personal injury to such student or others. We also suggest amending the bill to require a school administrator who searches a student's personal electronic device to notify the student and their parent or guardian, within 24 hours after the search, about what evidence of a violation of an applicable educational policy or risk of imminent personal injury to the student

or others was found. This would allow the student and parent to know exactly what evidence, if any, was found by school administrators on the device.

We further encourage an amendment to prohibit schools from taking disciplinary action against a student if the evidence used to justify that action was uncovered through a search that violates this bill's requirements. In addition, we believe a provision requiring schools to return a student's electronic device to their parent or guardian at the end of the school day of the search would help to ensure that the device is returned in a timely manner. Finally, we encourage an amendment to require each school and district to include this bill's provisions in their codes of conduct, in order to create transparency around these policies. The ACLU-CT encourages this committee to make these changes to strengthen the bill and to support the amended bill.