

1 AN ACT concerning corrections.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 1961 is amended by changing  
5 Section 11-20.1 as follows:

6 (720 ILCS 5/11-20.1) (from Ch. 38, par. 11-20.1)  
7 (Text of Section after amendment by P.A. 96-1551)  
8 Sec. 11-20.1. Child pornography.

9 (a) A person commits child pornography who:

10 (1) films, videotapes, photographs, or otherwise  
11 depicts or portrays by means of any similar visual medium  
12 or reproduction or depicts by computer any child whom he or  
13 she knows or reasonably should know to be under the age of  
14 18 and at least 13 years of age or any severely or  
15 profoundly mentally retarded person where such child or  
16 severely or profoundly mentally retarded person is:

17 (i) actually or by simulation engaged in any act of  
18 sexual penetration or sexual conduct with any person or  
19 animal; or

20 (ii) actually or by simulation engaged in any act  
21 of sexual penetration or sexual conduct involving the  
22 sex organs of the child or severely or profoundly  
23 mentally retarded person and the mouth, anus, or sex

1 organs of another person or animal; or which involves  
2 the mouth, anus or sex organs of the child or severely  
3 or profoundly mentally retarded person and the sex  
4 organs of another person or animal; or

5 (iii) actually or by simulation engaged in any act  
6 of masturbation; or

7 (iv) actually or by simulation portrayed as being  
8 the object of, or otherwise engaged in, any act of lewd  
9 fondling, touching, or caressing involving another  
10 person or animal; or

11 (v) actually or by simulation engaged in any act of  
12 excretion or urination within a sexual context; or

13 (vi) actually or by simulation portrayed or  
14 depicted as bound, fettered, or subject to sadistic,  
15 masochistic, or sadomasochistic abuse in any sexual  
16 context; or

17 (vii) depicted or portrayed in any pose, posture or  
18 setting involving a lewd exhibition of the unclothed or  
19 transparently clothed genitals, pubic area, buttocks,  
20 or, if such person is female, a fully or partially  
21 developed breast of the child or other person; or

22 (2) with the knowledge of the nature or content  
23 thereof, reproduces, disseminates, offers to disseminate,  
24 exhibits or possesses with intent to disseminate any film,  
25 videotape, photograph or other similar visual reproduction  
26 or depiction by computer of any child or severely or

1 profoundly mentally retarded person whom the person knows  
2 or reasonably should know to be under the age of 18 and at  
3 least 13 years of age or to be a severely or profoundly  
4 mentally retarded person, engaged in any activity  
5 described in subparagraphs (i) through (vii) of paragraph  
6 (1) of this subsection; or

7 (3) with knowledge of the subject matter or theme  
8 thereof, produces any stage play, live performance, film,  
9 videotape or other similar visual portrayal or depiction by  
10 computer which includes a child whom the person knows or  
11 reasonably should know to be under the age of 18 and at  
12 least 13 years of age or a severely or profoundly mentally  
13 retarded person engaged in any activity described in  
14 subparagraphs (i) through (vii) of paragraph (1) of this  
15 subsection; or

16 (4) solicits, uses, persuades, induces, entices, or  
17 coerces any child whom he or she knows or reasonably should  
18 know to be under the age of 18 and at least 13 years of age  
19 or a severely or profoundly mentally retarded person to  
20 appear in any stage play, live presentation, film,  
21 videotape, photograph or other similar visual reproduction  
22 or depiction by computer in which the child or severely or  
23 profoundly mentally retarded person is or will be depicted,  
24 actually or by simulation, in any act, pose or setting  
25 described in subparagraphs (i) through (vii) of paragraph  
26 (1) of this subsection; or

1           (5) is a parent, step-parent, legal guardian or other  
2 person having care or custody of a child whom the person  
3 knows or reasonably should know to be under the age of 18  
4 and at least 13 years of age or a severely or profoundly  
5 mentally retarded person and who knowingly permits,  
6 induces, promotes, or arranges for such child or severely  
7 or profoundly mentally retarded person to appear in any  
8 stage play, live performance, film, videotape, photograph  
9 or other similar visual presentation, portrayal or  
10 simulation or depiction by computer of any act or activity  
11 described in subparagraphs (i) through (vii) of paragraph  
12 (1) of this subsection; or

13           (6) with knowledge of the nature or content thereof,  
14 possesses any film, videotape, photograph or other similar  
15 visual reproduction or depiction by computer of any child  
16 or severely or profoundly mentally retarded person whom the  
17 person knows or reasonably should know to be under the age  
18 of 18 and at least 13 years of age or to be a severely or  
19 profoundly mentally retarded person, engaged in any  
20 activity described in subparagraphs (i) through (vii) of  
21 paragraph (1) of this subsection; or

22           (7) solicits, or knowingly uses, persuades, induces,  
23 entices, or coerces, a person to provide a child under the  
24 age of 18 and at least 13 years of age or a severely or  
25 profoundly mentally retarded person to appear in any  
26 videotape, photograph, film, stage play, live

1 presentation, or other similar visual reproduction or  
2 depiction by computer in which the child or severely or  
3 profoundly mentally retarded person will be depicted,  
4 actually or by simulation, in any act, pose, or setting  
5 described in subparagraphs (i) through (vii) of paragraph  
6 (1) of this subsection.

7 (b) (1) It shall be an affirmative defense to a charge of  
8 child pornography that the defendant reasonably believed,  
9 under all of the circumstances, that the child was 18 years  
10 of age or older or that the person was not a severely or  
11 profoundly mentally retarded person but only where, prior  
12 to the act or acts giving rise to a prosecution under this  
13 Section, he or she took some affirmative action or made a  
14 bonafide inquiry designed to ascertain whether the child  
15 was 18 years of age or older or that the person was not a  
16 severely or profoundly mentally retarded person and his or  
17 her reliance upon the information so obtained was clearly  
18 reasonable.

19 (2) (Blank).

20 (3) The charge of child pornography shall not apply to  
21 the performance of official duties by law enforcement or  
22 prosecuting officers or persons employed by law  
23 enforcement or prosecuting agencies, court personnel or  
24 attorneys, nor to bonafide treatment or professional  
25 education programs conducted by licensed physicians,  
26 psychologists or social workers.

1           (4) (Blank). ~~If the defendant possessed more than one~~  
2 ~~of the same film, videotape or visual reproduction or~~  
3 ~~depiction by computer in which child pornography is~~  
4 ~~depicted, then the trier of fact may infer that the~~  
5 ~~defendant possessed such materials with the intent to~~  
6 ~~disseminate them.~~

7           (5) The charge of child pornography does not apply to a  
8 person who does not voluntarily possess a film, videotape,  
9 or visual reproduction or depiction by computer in which  
10 child pornography is depicted. Possession is voluntary if  
11 the defendant knowingly procures or receives a film,  
12 videotape, or visual reproduction or depiction for a  
13 sufficient time to be able to terminate his or her  
14 possession.

15           (6) Any violation of paragraph (1), (2), (3), (4), (5),  
16 or (7) of subsection (a) that includes a child engaged in,  
17 solicited for, depicted in, or posed in any act of sexual  
18 penetration or bound, fettered, or subject to sadistic,  
19 masochistic, or sadomasochistic abuse in a sexual context  
20 shall be deemed a crime of violence.

21           (c) Violation of paragraph (1), (4), (5), or (7) of  
22 subsection (a) is a Class 1 felony with a mandatory minimum  
23 fine of \$2,000 and a maximum fine of \$100,000. Violation of  
24 paragraph (3) of subsection (a) is a Class 1 felony with a  
25 mandatory minimum fine of \$1500 and a maximum fine of \$100,000.  
26 Violation of paragraph (2) of subsection (a) is a Class 1

1 felony with a mandatory minimum fine of \$1000 and a maximum  
2 fine of \$100,000. Violation of paragraph (6) of subsection (a)  
3 is a Class 3 felony with a mandatory minimum fine of \$1000 and  
4 a maximum fine of \$100,000. Violation of paragraph (6) of  
5 subsection (a) is a Class X felony for which the defendant  
6 shall be sentenced to a term of imprisonment of not less than 9  
7 years and not more than 40 years if the defendant possessed  
8 more than one of the same film, videotape, or visual  
9 reproduction or depiction by computer in which child  
10 pornography is depicted.

11 (d) If a person is convicted of a second or subsequent  
12 violation of this Section within 10 years of a prior  
13 conviction, the court shall order a presentence psychiatric  
14 examination of the person. The examiner shall report to the  
15 court whether treatment of the person is necessary.

16 (e) Any film, videotape, photograph or other similar visual  
17 reproduction or depiction by computer which includes a child  
18 under the age of 18 and at least 13 years of age or a severely  
19 or profoundly mentally retarded person engaged in any activity  
20 described in subparagraphs (i) through (vii) or paragraph 1 of  
21 subsection (a), and any material or equipment used or intended  
22 for use in photographing, filming, printing, producing,  
23 reproducing, manufacturing, projecting, exhibiting, depiction  
24 by computer, or disseminating such material shall be seized and  
25 forfeited in the manner, method and procedure provided by  
26 Section 36-1 of this Code for the seizure and forfeiture of

1 vessels, vehicles and aircraft.

2 In addition, any person convicted under this Section is  
3 subject to the property forfeiture provisions set forth in  
4 Article 124B of the Code of Criminal Procedure of 1963.

5 (e-5) Upon the conclusion of a case brought under this  
6 Section, the court shall seal all evidence depicting a victim  
7 or witness that is sexually explicit. The evidence may be  
8 unsealed and viewed, on a motion of the party seeking to unseal  
9 and view the evidence, only for good cause shown and in the  
10 discretion of the court. The motion must expressly set forth  
11 the purpose for viewing the material. The State's attorney and  
12 the victim, if possible, shall be provided reasonable notice of  
13 the hearing on the motion to unseal the evidence. Any person  
14 entitled to notice of a hearing under this subsection (e-5) may  
15 object to the motion.

16 (f) Definitions. For the purposes of this Section:

17 (1) "Disseminate" means (i) to sell, distribute,  
18 exchange or transfer possession, whether with or without  
19 consideration or (ii) to make a depiction by computer  
20 available for distribution or downloading through the  
21 facilities of any telecommunications network or through  
22 any other means of transferring computer programs or data  
23 to a computer.

24 (2) "Produce" means to direct, promote, advertise,  
25 publish, manufacture, issue, present or show.

26 (3) "Reproduce" means to make a duplication or copy.



1           (4) "Depict by computer" means to generate or create,  
2           or cause to be created or generated, a computer program or  
3           data that, after being processed by a computer either alone  
4           or in conjunction with one or more computer programs,  
5           results in a visual depiction on a computer monitor,  
6           screen, or display.

7           (5) "Depiction by computer" means a computer program or  
8           data that, after being processed by a computer either alone  
9           or in conjunction with one or more computer programs,  
10          results in a visual depiction on a computer monitor,  
11          screen, or display.

12          (6) "Computer", "computer program", and "data" have  
13          the meanings ascribed to them in Section 16D-2 of this  
14          Code.

15          (7) For the purposes of this Section, "child  
16          pornography" includes a film, videotape, photograph, or  
17          other similar visual medium or reproduction or depiction by  
18          computer that is, or appears to be, that of a person,  
19          either in part, or in total, under the age of 18 and at  
20          least 13 years of age or a severely or profoundly mentally  
21          retarded person, regardless of the method by which the  
22          film, videotape, photograph, or other similar visual  
23          medium or reproduction or depiction by computer is created,  
24          adopted, or modified to appear as such. "Child pornography"  
25          also includes a film, videotape, photograph, or other  
26          similar visual medium or reproduction or depiction by

1 computer that is advertised, promoted, presented,  
2 described, or distributed in such a manner that conveys the  
3 impression that the film, videotape, photograph, or other  
4 similar visual medium or reproduction or depiction by  
5 computer is of a person under the age of 18 and at least 13  
6 years of age or a severely or profoundly mentally retarded  
7 person.

8 (g) Re-enactment; findings; purposes.

9 (1) The General Assembly finds and declares that:

10 (i) Section 50-5 of Public Act 88-680, effective  
11 January 1, 1995, contained provisions amending the  
12 child pornography statute, Section 11-20.1 of the  
13 Criminal Code of 1961. Section 50-5 also contained  
14 other provisions.

15 (ii) In addition, Public Act 88-680 was entitled  
16 "AN ACT to create a Safe Neighborhoods Law". (A)  
17 Article 5 was entitled JUVENILE JUSTICE and amended the  
18 Juvenile Court Act of 1987. (B) Article 15 was entitled  
19 GANGS and amended various provisions of the Criminal  
20 Code of 1961 and the Unified Code of Corrections. (C)  
21 Article 20 was entitled ALCOHOL ABUSE and amended  
22 various provisions of the Illinois Vehicle Code. (D)  
23 Article 25 was entitled DRUG ABUSE and amended the  
24 Cannabis Control Act and the Illinois Controlled  
25 Substances Act. (E) Article 30 was entitled FIREARMS  
26 and amended the Criminal Code of 1961 and the Code of

1 Criminal Procedure of 1963. (F) Article 35 amended the  
2 Criminal Code of 1961, the Rights of Crime Victims and  
3 Witnesses Act, and the Unified Code of Corrections. (G)  
4 Article 40 amended the Criminal Code of 1961 to  
5 increase the penalty for compelling organization  
6 membership of persons. (H) Article 45 created the  
7 Secure Residential Youth Care Facility Licensing Act  
8 and amended the State Finance Act, the Juvenile Court  
9 Act of 1987, the Unified Code of Corrections, and the  
10 Private Correctional Facility Moratorium Act. (I)  
11 Article 50 amended the WIC Vendor Management Act, the  
12 Firearm Owners Identification Card Act, the Juvenile  
13 Court Act of 1987, the Criminal Code of 1961, the  
14 Wrongs to Children Act, and the Unified Code of  
15 Corrections.

16 (iii) On September 22, 1998, the Third District  
17 Appellate Court in *People v. Dainty*, 701 N.E. 2d 118,  
18 ruled that Public Act 88-680 violates the single  
19 subject clause of the Illinois Constitution (Article  
20 IV, Section 8 (d)) and was unconstitutional in its  
21 entirety. As of the time this amendatory Act of 1999  
22 was prepared, *People v. Dainty* was still subject to  
23 appeal.

24 (iv) Child pornography is a vital concern to the  
25 people of this State and the validity of future  
26 prosecutions under the child pornography statute of

1           the Criminal Code of 1961 is in grave doubt.

2           (2) It is the purpose of this amendatory Act of 1999 to  
3 prevent or minimize any problems relating to prosecutions  
4 for child pornography that may result from challenges to  
5 the constitutional validity of Public Act 88-680 by  
6 re-enacting the Section relating to child pornography that  
7 was included in Public Act 88-680.

8           (3) This amendatory Act of 1999 re-enacts Section  
9 11-20.1 of the Criminal Code of 1961, as it has been  
10 amended. This re-enactment is intended to remove any  
11 question as to the validity or content of that Section; it  
12 is not intended to supersede any other Public Act that  
13 amends the text of the Section as set forth in this  
14 amendatory Act of 1999. The material is shown as existing  
15 text (i.e., without underscoring) because, as of the time  
16 this amendatory Act of 1999 was prepared, *People v. Dainty*  
17 was subject to appeal to the Illinois Supreme Court.

18           (4) The re-enactment by this amendatory Act of 1999 of  
19 Section 11-20.1 of the Criminal Code of 1961 relating to  
20 child pornography that was amended by Public Act 88-680 is  
21 not intended, and shall not be construed, to imply that  
22 Public Act 88-680 is invalid or to limit or impair any  
23 legal argument concerning whether those provisions were  
24 substantially re-enacted by other Public Acts.

25           (Source: P.A. 96-292, eff. 1-1-10; 96-712, eff. 1-1-10;  
26 96-1000, eff. 7-2-10; 96-1551, eff. 7-1-11.)