



## 102ND GENERAL ASSEMBLY

### State of Illinois

2021 and 2022

HB3687

Introduced 2/22/2021, by Rep. Kelly M. Cassidy

#### SYNOPSIS AS INTRODUCED:

720 ILCS 5/11-0.1	
720 ILCS 5/11-1.60	was 720 ILCS 5/12-16
720 ILCS 5/11-1.70	was 720 ILCS 5/12-17
720 ILCS 5/11-20.1	from Ch. 38, par. 11-20.1
720 ILCS 5/26-4	from Ch. 38, par. 26-4

Amends the Criminal Code of 2012. Provides that it is unlawful for any person to knowingly make a video record or transmit live video of another's intimate parts. Provides that in any criminal proceeding, any property or material that constitutes child pornography shall remain in the care, custody, and control of either the State or the court. Determines when a victim is considered unable to give knowing consent. Defines terms. Makes other changes.

LRB102 13671 KMF 19021 b

1 AN ACT concerning criminal law.

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 2012 is amended by  
5 changing Sections 11-0.1, 11-1.60, 11-20.1, 11-1.70, and 26-4  
6 as follows:

7 (720 ILCS 5/11-0.1)

8 Sec. 11-0.1. Definitions. In this Article, unless the  
9 context clearly requires otherwise, the following terms are  
10 defined as indicated:

11 "Accused" means a person accused of an offense prohibited  
12 by Section 11-1.20, 11-1.30, 11-1.40, 11-1.50, or 11-1.60 of  
13 this Code or a person for whose conduct the accused is legally  
14 responsible under Article 5 of this Code.

15 "Adult obscenity or child pornography Internet site". See  
16 Section 11-23.

17 "Advance prostitution" means:

18 (1) Soliciting for a prostitute by performing any of  
19 the following acts when acting other than as a prostitute  
20 or a patron of a prostitute:

21 (A) Soliciting another for the purpose of  
22 prostitution.

23 (B) Arranging or offering to arrange a meeting of

1 persons for the purpose of prostitution.

2 (C) Directing another to a place knowing the  
3 direction is for the purpose of prostitution.

4 (2) Keeping a place of prostitution by controlling or  
5 exercising control over the use of any place that could  
6 offer seclusion or shelter for the practice of  
7 prostitution and performing any of the following acts when  
8 acting other than as a prostitute or a patron of a  
9 prostitute:

10 (A) Knowingly granting or permitting the use of  
11 the place for the purpose of prostitution.

12 (B) Granting or permitting the use of the place  
13 under circumstances from which he or she could  
14 reasonably know that the place is used or is to be used  
15 for purposes of prostitution.

16 (C) Permitting the continued use of the place  
17 after becoming aware of facts or circumstances from  
18 which he or she should reasonably know that the place  
19 is being used for purposes of prostitution.

20 "Agency". See Section 11-9.5.

21 "Arranges". See Section 11-6.5.

22 "Bodily harm" means physical harm, and includes, but is  
23 not limited to, sexually transmitted disease, pregnancy, and  
24 impotence.

25 "Care and custody". See Section 11-9.5.

26 "Child care institution". See Section 11-9.3.

1 "Child pornography". See Section 11-20.1.

2 "Child sex offender". See Section 11-9.3.

3 "Community agency". See Section 11-9.5.

4 "Conditional release". See Section 11-9.2.

5 "Consent" means a freely given agreement to the act of  
6 sexual penetration or sexual conduct in question. Lack of  
7 verbal or physical resistance or submission by the victim  
8 resulting from the use of force or threat of force by the  
9 accused shall not constitute consent. The manner of dress of  
10 the victim at the time of the offense shall not constitute  
11 consent. ~~See Section 11-1.70.~~

12 "Custody". See Section 11-9.2.

13 "Day care center". See Section 11-9.3.

14 "Depict by computer". See Section 11-20.1.

15 "Depiction by computer". See Section 11-20.1.

16 "Disseminate". See Section 11-20.1.

17 "Distribute". See Section 11-21.

18 "Family member" means a parent, grandparent, child, aunt,  
19 uncle, great-aunt, or great-uncle, whether by whole blood,  
20 half-blood, or adoption, and includes a step-grandparent,  
21 step-parent, or step-child. "Family member" also means, if the  
22 victim is a child under 18 years of age, an accused who has  
23 resided in the household with the child continuously for at  
24 least 6 months.

25 "Force or threat of force" means the use of force or  
26 violence or the threat of force or violence, including, but

1 not limited to, the following situations:

2 (1) when the accused threatens to use force or  
3 violence on the victim or on any other person, and the  
4 victim under the circumstances reasonably believes that  
5 the accused has the ability to execute that threat; or

6 (2) when the accused overcomes the victim by use of  
7 superior strength or size, physical restraint, or physical  
8 confinement.

9 "Harmful to minors". See Section 11-21.

10 "Loiter". See Section 9.3.

11 "Material". See Section 11-21.

12 "Minor". See Section 11-21.

13 "Nudity". See Section 11-21.

14 "Obscene". See Section 11-20.

15 "Part day child care facility". See Section 11-9.3.

16 "Penal system". See Section 11-9.2.

17 "Person responsible for the child's welfare". See Section  
18 11-9.1A.

19 "Person with a disability". See Section 11-9.5.

20 "Playground". See Section 11-9.3.

21 "Probation officer". See Section 11-9.2.

22 "Produce". See Section 11-20.1.

23 "Profit from prostitution" means, when acting other than  
24 as a prostitute, to receive anything of value for personally  
25 rendered prostitution services or to receive anything of value  
26 from a prostitute, if the thing received is not for lawful

1 consideration and the person knows it was earned in whole or in  
2 part from the practice of prostitution.

3 "Public park". See Section 11-9.3.

4 "Public place". See Section 11-30.

5 "Reproduce". See Section 11-20.1.

6 "Sado-masochistic abuse". See Section 11-21.

7 "School". See Section 11-9.3.

8 "School official". See Section 11-9.3.

9 "Sexual abuse". See Section 11-9.1A.

10 "Sexual act". See Section 11-9.1.

11 "Sexual conduct" means any knowing touching or fondling by  
12 the victim or the accused, either directly or through  
13 clothing, of the sex organs, anus, or breast of the victim or  
14 the accused, or any part of the body of a child under 13 years  
15 of age, or any transfer or transmission of semen by the accused  
16 upon any part of the clothed or unclothed body of the victim,  
17 for the purpose of sexual gratification or arousal of the  
18 victim or the accused.

19 "Sexual excitement". See Section 11-21.

20 "Sexual penetration" means any contact, however slight,  
21 between the sex organ or anus of one person and an object or  
22 the sex organ, mouth, or anus of another person, or any  
23 intrusion, however slight, of any part of the body of one  
24 person or of any animal or object into the sex organ or anus of  
25 another person, including, but not limited to, cunnilingus,  
26 fellatio, or anal penetration. Evidence of emission of semen

1 is not required to prove sexual penetration.

2 "Solicit". See Section 11-6.

3 "State-operated facility". See Section 11-9.5.

4 "Supervising officer". See Section 11-9.2.

5 "Surveillance agent". See Section 11-9.2.

6 "Treatment and detention facility". See Section 11-9.2.

7 "Unable to give knowing consent" includes when the accused  
8 administers any intoxicating or anesthetic substance, or any  
9 controlled substance causing the victim to become unconscious  
10 of the nature of the act and this condition was known, or  
11 reasonably should have been known by the accused. As used in  
12 this paragraph, "unconscious of the nature of the act" means  
13 incapable of resisting because the victim meets any one of the  
14 following conditions:

15 (1) was unconscious or asleep;

16 (2) was not aware, knowing, perceiving, or cognizant  
17 that the act occurred;

18 (3) was not aware, knowing, perceiving, or cognizant  
19 of the essential characteristics of the act due to the  
20 perpetrator's fraud in fact; or

21 (4) was not aware, knowing, perceiving, or cognizant  
22 of the essential characteristics of the act due to the  
23 perpetrator's fraudulent representation that the sexual  
24 penetration served a professional purpose when it served  
25 no professional purpose.

26 A victim is presumed "unable to give knowing consent" when

1 the victim:

2 (1) is committed to the care and custody or  
3 supervision of the Illinois Department of Corrections  
4 (IDOC) and the accused is an employee or volunteer who is  
5 not married to the victim who knows or reasonably should  
6 know that the victim is committed to the care and custody  
7 or supervision of such department;

8 (2) is committed to or placed with the Department of  
9 Child and Family Services (DCFS) and in residential care,  
10 and the accused employee is not married to the victim, and  
11 knows or reasonably should know that the victim is  
12 committed to or placed with DCFS and in residential care;

13 (3) is a client or patient and the accused is a health  
14 care provider or mental health care provider and the  
15 sexual conduct or sexual penetration occurs during a  
16 treatment session, consultation, interview, or  
17 examination;

18 (4) is a resident or inpatient of a residential  
19 facility and the accused is an employee of the facility  
20 who is not married to such resident or inpatient who  
21 provides direct care services, case management services,  
22 medical or other clinical services, habilitative services  
23 or direct supervision of the residents in the facility in  
24 which the resident resides; or an officer or other  
25 employee, consultant, contractor or volunteer of the  
26 residential facility, who knows or reasonably should know



1       that the person is a resident of such facility; or  
2       (5) is detained or otherwise in the custody of a  
3       police officer, peace officer, or other law enforcement  
4       official who: (i) is detaining or maintaining custody of  
5       such person; or (ii) knows, or reasonably should know,  
6       that at the time of the offense, such person was detained  
7       or in custody and the police officer, peace officer, or  
8       other law enforcement official is not married to such  
9       detainee.

10       "Victim" means a person alleging to have been subjected to  
11       an offense prohibited by Section 11-1.20, 11-1.30, 11-1.40,  
12       11-1.50, or 11-1.60 of this Code.

13       (Source: P.A. 96-1551, eff. 7-1-11.)

14       (720 ILCS 5/11-1.60) (was 720 ILCS 5/12-16)

15       Sec. 11-1.60. Aggravated criminal sexual abuse.

16       (a) A person commits aggravated criminal sexual abuse if  
17       that person commits criminal sexual abuse and any of the  
18       following aggravating circumstances exist (i) during the  
19       commission of the offense or (ii) for purposes of paragraph  
20       (7), as part of the same course of conduct as the commission of  
21       the offense:

22               (1) the person displays, threatens to use, or uses a  
23       dangerous weapon or any other object fashioned or used in  
24       a manner that leads the victim, under the circumstances,  
25       reasonably to believe that the object is a dangerous

1           weapon;

2           (2) the person causes bodily harm to the victim;

3           (3) the victim is 60 years of age or older;

4           (4) the victim is a person with a physical disability;

5           (5) the person acts in a manner that threatens or  
6           endangers the life of the victim or any other person;

7           (6) the person commits the criminal sexual abuse  
8           during the course of committing or attempting to commit  
9           any other felony; or

10          (7) the person delivers (by injection, inhalation,  
11          ingestion, transfer of possession, or any other means) any  
12          controlled substance to the victim for other than medical  
13          purposes without the victim's consent or by threat or  
14          deception.

15          (b) A person commits aggravated criminal sexual abuse if  
16          that person commits an act of sexual conduct with a victim who  
17          is under 18 years of age and the person is a family member.

18          (c) A person commits aggravated criminal sexual abuse if:

19           (1) that person is 17 years of age or over and: (i)  
20           commits an act of sexual conduct with a victim who is under  
21           13 years of age; or (ii) commits an act of sexual conduct  
22           with a victim who is at least 13 years of age but under 17  
23           years of age and the person uses force or threat of force  
24           to commit the act; or

25           (2) that person is under 17 years of age and: (i)  
26           commits an act of sexual conduct with a victim who is under

1           9 years of age; or (ii) commits an act of sexual conduct  
2           with a victim who is at least 9 years of age but under 17  
3           years of age and the person uses force or threat of force  
4           to commit the act.

5           (d) A person commits aggravated criminal sexual abuse if  
6           that person commits an act of sexual penetration or sexual  
7           conduct with a victim who is at least 13 years of age but under  
8           17 years of age and the person is at least 5 years older than  
9           the victim.

10          (e) A person commits aggravated criminal sexual abuse if  
11          that person commits an act of sexual conduct with a victim who  
12          is a person with a severe or profound intellectual disability.

13          (f) A person commits aggravated criminal sexual abuse if  
14          that person commits an act of sexual conduct with a victim who  
15          is ~~at least 13 years of age~~ but under 18 years of age and the  
16          person is 17 years of age or over and holds a position of  
17          trust, authority, or supervision in relation to the victim.

18          (g) Sentence. Aggravated criminal sexual abuse for a  
19          violation of subsection (a), (b), (c), (d) or (e) of this  
20          Section is a Class 2 felony. Aggravated criminal sexual abuse  
21          for a violation of subsection (f) of this Section is a Class 1  
22          felony. ~~Aggravated criminal sexual abuse is a Class 2 felony.~~

23          (Source: P.A. 99-143, eff. 7-27-15.)

24                 (720 ILCS 5/11-1.70) (was 720 ILCS 5/12-17)

25                 Sec. 11-1.70. Defenses with respect to offenses described

1 in Sections 11-1.20 through 11-1.60.

2 (a) It shall be a defense to any offense under Section  
3 11-1.20, 11-1.30, 11-1.40, 11-1.50, or 11-1.60 of this Code  
4 where force or threat of force is an element of the offense  
5 that the victim consented. ~~"Consent" means a freely given  
6 agreement to the act of sexual penetration or sexual conduct  
7 in question. Lack of verbal or physical resistance or  
8 submission by the victim resulting from the use of force or  
9 threat of force by the accused shall not constitute consent.  
10 The manner of dress of the victim at the time of the offense  
11 shall not constitute consent.~~

12 (b) It shall be a defense under subsection (b) and  
13 subsection (c) of Section 11-1.50 and subsection (d) of  
14 Section 11-1.60 of this Code that the accused reasonably  
15 believed the person to be 17 years of age or over.

16 (c) A person who initially consents to sexual penetration  
17 or sexual conduct is not deemed to have consented to any sexual  
18 penetration or sexual conduct that occurs after he or she  
19 withdraws consent during the course of that sexual penetration  
20 or sexual conduct.

21 (Source: P.A. 96-1551, eff. 7-1-11.)

22 (720 ILCS 5/11-20.1) (from Ch. 38, par. 11-20.1)

23 Sec. 11-20.1. Child pornography.

24 (a) A person commits child pornography who:

25 (1) films, videotapes, photographs, or otherwise

1 depicts or portrays by means of any similar visual medium  
2 or reproduction or depicts by computer any child whom he  
3 or she knows or reasonably should know to be under the age  
4 of 18 or any person with a severe or profound intellectual  
5 disability where such child or person with a severe or  
6 profound intellectual disability is:

7 (i) actually or by simulation engaged in any act  
8 of sexual penetration or sexual conduct with any  
9 person or animal; or

10 (ii) actually or by simulation engaged in any act  
11 of sexual penetration or sexual conduct involving the  
12 sex organs of the child or person with a severe or  
13 profound intellectual disability and the mouth, anus,  
14 or sex organs of another person or animal; or which  
15 involves the mouth, anus or sex organs of the child or  
16 person with a severe or profound intellectual  
17 disability and the sex organs of another person or  
18 animal; or

19 (iii) actually or by simulation engaged in any act  
20 of masturbation; or

21 (iv) actually or by simulation portrayed as being  
22 the object of, or otherwise engaged in, any act of lewd  
23 fondling, touching, or caressing involving another  
24 person or animal; or

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

1           (vi) actually or by simulation portrayed or  
2           depicted as bound, fettered, or subject to sadistic,  
3           masochistic, or sadomasochistic abuse in any sexual  
4           context; or

5           (vii) depicted or portrayed in any pose, posture  
6           or setting involving a lewd exhibition of the  
7           unclothed or transparently clothed genitals, pubic  
8           area, buttocks, or, if such person is female, a fully  
9           or partially developed breast of the child or other  
10          person; or

11          (2) with the knowledge of the nature or content  
12          thereof, reproduces, disseminates, offers to disseminate,  
13          exhibits or possesses with intent to disseminate any film,  
14          videotape, photograph or other similar visual reproduction  
15          or depiction by computer of any child or person with a  
16          severe or profound intellectual disability whom the person  
17          knows or reasonably should know to be under the age of 18  
18          or to be a person with a severe or profound intellectual  
19          disability, engaged in any activity described in  
20          subparagraphs (i) through (vii) of paragraph (1) of this  
21          subsection; or

22          (3) with knowledge of the subject matter or theme  
23          thereof, produces any stage play, live performance, film,  
24          videotape or other similar visual portrayal or depiction  
25          by computer which includes a child whom the person knows  
26          or reasonably should know to be under the age of 18 or a

1 person with a severe or profound intellectual disability  
2 engaged in any activity described in subparagraphs (i)  
3 through (vii) of paragraph (1) of this subsection; or

4 (4) solicits, uses, persuades, induces, entices, or  
5 coerces any child whom he or she knows or reasonably  
6 should know to be under the age of 18 or a person with a  
7 severe or profound intellectual disability to appear in  
8 any stage play, live presentation, film, videotape,  
9 photograph or other similar visual reproduction or  
10 depiction by computer in which the child or person with a  
11 severe or profound intellectual disability is or will be  
12 depicted, actually or by simulation, in any act, pose or  
13 setting described in subparagraphs (i) through (vii) of  
14 paragraph (1) of this subsection; or

15 (5) is a parent, step-parent, legal guardian or other  
16 person having care or custody of a child whom the person  
17 knows or reasonably should know to be under the age of 18  
18 or a person with a severe or profound intellectual  
19 disability and who knowingly permits, induces, promotes,  
20 or arranges for such child or person with a severe or  
21 profound intellectual disability to appear in any stage  
22 play, live performance, film, videotape, photograph or  
23 other similar visual presentation, portrayal or simulation  
24 or depiction by computer of any act or activity described  
25 in subparagraphs (i) through (vii) of paragraph (1) of  
26 this subsection; or

1           (6) with knowledge of the nature or content thereof,  
2           possesses any film, videotape, photograph or other similar  
3           visual reproduction or depiction by computer of any child  
4           or person with a severe or profound intellectual  
5           disability whom the person knows or reasonably should know  
6           to be under the age of 18 or to be a person with a severe  
7           or profound intellectual disability, engaged in any  
8           activity described in subparagraphs (i) through (vii) of  
9           paragraph (1) of this subsection; or

10          (7) solicits, or knowingly uses, persuades, induces,  
11          entices, or coerces, a person to provide a child under the  
12          age of 18 or a person with a severe or profound  
13          intellectual disability to appear in any videotape,  
14          photograph, film, stage play, live presentation, or other  
15          similar visual reproduction or depiction by computer in  
16          which the child or person with a severe or profound  
17          intellectual disability will be depicted, actually or by  
18          simulation, in any act, pose, or setting described in  
19          subparagraphs (i) through (vii) of paragraph (1) of this  
20          subsection.

21          (a-5) The possession of each individual film, videotape,  
22          photograph, or other similar visual reproduction or depiction  
23          by computer in violation of this Section constitutes a single  
24          and separate violation. This subsection (a-5) does not apply  
25          to multiple copies of the same film, videotape, photograph, or  
26          other similar visual reproduction or depiction by computer



1 that are identical to each other.

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

14 (1.5) Telecommunications carriers, commercial mobile  
15 service providers, and providers of information services,  
16 including, but not limited to, Internet service providers and  
17 hosting service providers, are not liable under this Section  
18 by virtue of the transmission, storage, or caching of  
19 electronic communications or messages of others or by virtue  
20 of the provision of other related telecommunications,  
21 commercial mobile services, or information services used by  
22 others in violation of this Section.

23 (2) (Blank).

24 (3) The charge of child pornography shall not apply to the  
25 performance of official duties by law enforcement or  
26 prosecuting officers or persons employed by law enforcement or

1 prosecuting agencies, court personnel or attorneys, nor to  
2 bonafide treatment or professional education programs  
3 conducted by licensed physicians, psychologists or social  
4 workers. In any criminal proceeding, any property or material  
5 that constitutes child pornography shall remain in the care,  
6 custody, and control of either the State or the court. A motion  
7 to view the evidence shall comply with subsection (e-5) of  
8 this Section.

9 (4) If the defendant possessed more than one of the same  
10 film, videotape or visual reproduction or depiction by  
11 computer in which child pornography is depicted, then the  
12 trier of fact may infer that the defendant possessed such  
13 materials with the intent to disseminate them.

14 (5) The charge of child pornography does not apply to a  
15 person who does not voluntarily possess a film, videotape, or  
16 visual reproduction or depiction by computer in which child  
17 pornography is depicted. Possession is voluntary if the  
18 defendant knowingly procures or receives a film, videotape, or  
19 visual reproduction or depiction for a sufficient time to be  
20 able to terminate his or her possession.

21 (6) Any violation of paragraph (1), (2), (3), (4), (5), or  
22 (7) of subsection (a) that includes a child engaged in,  
23 solicited for, depicted in, or posed in any act of sexual  
24 penetration or bound, fettered, or subject to sadistic,  
25 masochistic, or sadomasochistic abuse in a sexual context  
26 shall be deemed a crime of violence.

1 (c) If the violation does not involve a film, videotape,  
2 or other moving depiction, a violation of paragraph (1), (4),  
3 (5), or (7) of subsection (a) is a Class 1 felony with a  
4 mandatory minimum fine of \$2,000 and a maximum fine of  
5 \$100,000. If the violation involves a film, videotape, or  
6 other moving depiction, a violation of paragraph (1), (4),  
7 (5), or (7) of subsection (a) is a Class X felony with a  
8 mandatory minimum fine of \$2,000 and a maximum fine of  
9 \$100,000. If the violation does not involve a film, videotape,  
10 or other moving depiction, a violation of paragraph (3) of  
11 subsection (a) is a Class 1 felony with a mandatory minimum  
12 fine of \$1500 and a maximum fine of \$100,000. If the violation  
13 involves a film, videotape, or other moving depiction, a  
14 violation of paragraph (3) of subsection (a) is a Class X  
15 felony with a mandatory minimum fine of \$1500 and a maximum  
16 fine of \$100,000. If the violation does not involve a film,  
17 videotape, or other moving depiction, a violation of paragraph  
18 (2) of subsection (a) is a Class 1 felony with a mandatory  
19 minimum fine of \$1000 and a maximum fine of \$100,000. If the  
20 violation involves a film, videotape, or other moving  
21 depiction, a violation of paragraph (2) of subsection (a) is a  
22 Class X felony with a mandatory minimum fine of \$1000 and a  
23 maximum fine of \$100,000. If the violation does not involve a  
24 film, videotape, or other moving depiction, a violation of  
25 paragraph (6) of subsection (a) is a Class 3 felony with a  
26 mandatory minimum fine of \$1000 and a maximum fine of

1 \$100,000. If the violation involves a film, videotape, or  
2 other moving depiction, a violation of paragraph (6) of  
3 subsection (a) is a Class 2 felony with a mandatory minimum  
4 fine of \$1000 and a maximum fine of \$100,000.

5 (c-5) Where the child depicted is under the age of 13, a  
6 violation of paragraph (1), (2), (3), (4), (5), or (7) of  
7 subsection (a) is a Class X felony with a mandatory minimum  
8 fine of \$2,000 and a maximum fine of \$100,000. Where the child  
9 depicted is under the age of 13, a violation of paragraph (6)  
10 of subsection (a) is a Class 2 felony with a mandatory minimum  
11 fine of \$1,000 and a maximum fine of \$100,000. Where the child  
12 depicted is under the age of 13, a person who commits a  
13 violation of paragraph (1), (2), (3), (4), (5), or (7) of  
14 subsection (a) where the defendant has previously been  
15 convicted under the laws of this State or any other state of  
16 the offense of child pornography, aggravated child  
17 pornography, aggravated criminal sexual abuse, aggravated  
18 criminal sexual assault, predatory criminal sexual assault of  
19 a child, or any of the offenses formerly known as rape, deviate  
20 sexual assault, indecent liberties with a child, or aggravated  
21 indecent liberties with a child where the victim was under the  
22 age of 18 years or an offense that is substantially equivalent  
23 to those offenses, is guilty of a Class X felony for which the  
24 person shall be sentenced to a term of imprisonment of not less  
25 than 9 years with a mandatory minimum fine of \$2,000 and a  
26 maximum fine of \$100,000. Where the child depicted is under

1 the age of 13, a person who commits a violation of paragraph  
2 (6) of subsection (a) where the defendant has previously been  
3 convicted under the laws of this State or any other state of  
4 the offense of child pornography, aggravated child  
5 pornography, aggravated criminal sexual abuse, aggravated  
6 criminal sexual assault, predatory criminal sexual assault of  
7 a child, or any of the offenses formerly known as rape, deviate  
8 sexual assault, indecent liberties with a child, or aggravated  
9 indecent liberties with a child where the victim was under the  
10 age of 18 years or an offense that is substantially equivalent  
11 to those offenses, is guilty of a Class 1 felony with a  
12 mandatory minimum fine of \$1,000 and a maximum fine of  
13 \$100,000. The issue of whether the child depicted is under the  
14 age of 13 is an element of the offense to be resolved by the  
15 trier of fact.

16 (d) If a person is convicted of a second or subsequent  
17 violation of this Section within 10 years of a prior  
18 conviction, the court shall order a presentence psychiatric  
19 examination of the person. The examiner shall report to the  
20 court whether treatment of the person is necessary.

21 (e) Any film, videotape, photograph or other similar  
22 visual reproduction or depiction by computer which includes a  
23 child under the age of 18 or a person with a severe or profound  
24 intellectual disability engaged in any activity described in  
25 subparagraphs (i) through (vii) or paragraph 1 of subsection  
26 (a), and any material or equipment used or intended for use in

1 photographing, filming, printing, producing, reproducing,  
2 manufacturing, projecting, exhibiting, depiction by computer,  
3 or disseminating such material shall be seized and forfeited  
4 in the manner, method and procedure provided by Section 36-1  
5 of this Code for the seizure and forfeiture of vessels,  
6 vehicles and aircraft.

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

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

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

22 (1) "Disseminate" means (i) to sell, distribute,  
23 exchange or transfer possession, whether with or without  
24 consideration or (ii) to make a depiction by computer  
25 available for distribution or downloading through the  
26 facilities of any telecommunications network or through

1 any other means of transferring computer programs or data  
2 to a computer.

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

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

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

12 (5) "Depiction by computer" means a computer program  
13 or data that, after being processed by a computer either  
14 alone or in conjunction with one or more computer  
15 programs, results in a visual depiction on a computer  
16 monitor, screen, or display.

17 (6) "Computer", "computer program", and "data" have  
18 the meanings ascribed to them in Section 17.05 of this  
19 Code.

20 (7) For the purposes of this Section, "child  
21 pornography" includes a film, videotape, photograph, or  
22 other similar visual medium or reproduction or depiction  
23 by computer that is, or appears to be, that of a person,  
24 either in part, or in total, under the age of 18 or a  
25 person with a severe or profound intellectual disability,  
26 regardless of the method by which the film, videotape,

1 photograph, or other similar visual medium or reproduction  
2 or depiction by computer is created, adopted, or modified  
3 to appear as such. "Child pornography" also includes a  
4 film, videotape, photograph, or other similar visual  
5 medium or reproduction or depiction by computer that is  
6 advertised, promoted, presented, described, or distributed  
7 in such a manner that conveys the impression that the  
8 film, videotape, photograph, or other similar visual  
9 medium or reproduction or depiction by computer is of a  
10 person under the age of 18 or a person with a severe or  
11 profound intellectual disability.

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

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

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

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



1 Code. (D) Article 25 was entitled DRUG ABUSE and  
2 amended the Cannabis Control Act and the Illinois  
3 Controlled Substances Act. (E) Article 30 was entitled  
4 FIREARMS and amended the Criminal Code of 1961 and the  
5 Code of Criminal Procedure of 1963. (F) Article 35  
6 amended the Criminal Code of 1961, the Rights of Crime  
7 Victims and Witnesses Act, and the Unified Code of  
8 Corrections. (G) Article 40 amended the Criminal Code  
9 of 1961 to increase the penalty for compelling  
10 organization membership of persons. (H) Article 45  
11 created the Secure Residential Youth Care Facility  
12 Licensing Act and amended the State Finance Act, the  
13 Juvenile Court Act of 1987, the Unified Code of  
14 Corrections, and the Private Correctional Facility  
15 Moratorium Act. (I) Article 50 amended the WIC Vendor  
16 Management Act, the Firearm Owners Identification Card  
17 Act, the Juvenile Court Act of 1987, the Criminal Code  
18 of 1961, the Wrongs to Children Act, and the Unified  
19 Code of Corrections.

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

1 appeal.

2 (iv) Child pornography is a vital concern to the  
3 people of this State and the validity of future  
4 prosecutions under the child pornography statute of  
5 the Criminal Code of 1961 is in grave doubt.

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

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

22 (4) The re-enactment by this amendatory Act of 1999 of  
23 Section 11-20.1 of the Criminal Code of 1961 relating to  
24 child pornography that was amended by Public Act 88-680 is  
25 not intended, and shall not be construed, to imply that  
26 Public Act 88-680 is invalid or to limit or impair any

1 legal argument concerning whether those provisions were  
2 substantially re-enacted by other Public Acts.

3 (Source: P.A. 101-87, eff. 1-1-20.)

4 (720 ILCS 5/26-4) (from Ch. 38, par. 26-4)

5 Sec. 26-4. Unauthorized video recording and live video  
6 transmission.

7 (a) It is unlawful for any person to knowingly make a video  
8 record or transmit live video of another person without that  
9 person's consent in a restroom, tanning bed, tanning salon,  
10 locker room, changing room, or hotel bedroom.

11 (a-5) It is unlawful for any person to knowingly make a  
12 video record or transmit live video of another person in that  
13 other person's residence without that person's consent.

14 (a-6) It is unlawful for any person to knowingly make a  
15 video record or transmit live video of another person in that  
16 other person's residence without that person's consent when  
17 the recording or transmission is made outside that person's  
18 residence by use of an audio or video device that records or  
19 transmits from a remote location.

20 (a-10) It is unlawful for any person to knowingly make a  
21 video record or transmit live video of another person's  
22 intimate parts ~~person under or through the clothing worn by~~  
23 ~~that other person~~ for the purpose of viewing the body of or the  
24 undergarments worn by that other person without that person's  
25 consent. For the purposes of this subsection (a-5), "intimate

1 parts" means the fully unclothed, partially unclothed, or  
2 transparently clothed genitals, pubic area, anus, or if the  
3 person is female, a partially or fully exposed nipple,  
4 including exposure through transparent clothing.

5 (a-15) It is unlawful for any person to place or cause to  
6 be placed a device that makes a video record or transmits a  
7 live video in a restroom, tanning bed, tanning salon, locker  
8 room, changing room, or hotel bedroom with the intent to make a  
9 video record or transmit live video of another person without  
10 that person's consent.

11 (a-20) It is unlawful for any person to place or cause to  
12 be placed a device that makes a video record or transmits a  
13 live video with the intent to make a video record or transmit  
14 live video of another person in that other person's residence  
15 without that person's consent.

16 (a-25) It is unlawful for any person to, by any means,  
17 knowingly disseminate, or permit to be disseminated, a video  
18 record or live video that he or she knows to have been made or  
19 transmitted in violation of (a), (a-5), (a-6), (a-10), (a-15),  
20 or (a-20).

21 (b) Exemptions. The following activities shall be exempt  
22 from the provisions of this Section:

23 (1) The making of a video record or transmission of  
24 live video by law enforcement officers pursuant to a  
25 criminal investigation, which is otherwise lawful;

26 (2) The making of a video record or transmission of

1 live video by correctional officials for security reasons  
2 or for investigation of alleged misconduct involving a  
3 person committed to the Department of Corrections; and

4 (3) The making of a video record or transmission of  
5 live video in a locker room by a reporter or news medium,  
6 as those terms are defined in Section 8-902 of the Code of  
7 Civil Procedure, where the reporter or news medium has  
8 been granted access to the locker room by an appropriate  
9 authority for the purpose of conducting interviews.

10 (c) The provisions of this Section do not apply to any  
11 sound recording or transmission of an oral conversation made  
12 as the result of the making of a video record or transmission  
13 of live video, and to which Article 14 of this Code applies.

14 (d) Sentence.

15 (1) A violation of subsection (a-15) or (a-20) ~~(a-10),~~  
16 ~~(a-15), or (a-20)~~ is a Class A misdemeanor.

17 (2) A violation of subsection (a), (a-5), ~~or~~ (a-6), or  
18 (a-10) is a Class 4 felony.

19 (3) A violation of subsection (a-25) is a Class 3  
20 felony.

21 (4) A violation of subsection (a), (a-5), (a-6),  
22 (a-10), (a-15) or (a-20) is a Class 3 felony if the victim  
23 is a person under 18 years of age or if the violation is  
24 committed by an individual who is required to register as  
25 a sex offender under the Sex Offender Registration Act.

26 (5) A violation of subsection (a-25) is a Class 2

1 felony if the victim is a person under 18 years of age or  
2 if the violation is committed by an individual who is  
3 required to register as a sex offender under the Sex  
4 Offender Registration Act.

5 (e) For purposes of this Section:

6 (1) "Residence" includes a rental dwelling, but does  
7 not include stairwells, corridors, laundry facilities, or  
8 additional areas in which the general public has access.

9 (2) "Video record" means and includes any videotape,  
10 photograph, film, or other electronic or digital recording  
11 of a still or moving visual image; and "live video" means  
12 and includes any real-time or contemporaneous electronic  
13 or digital transmission of a still or moving visual image.

14 (Source: P.A. 96-416, eff. 1-1-10; 97-813, eff. 7-13-12.)