

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 Abused and Neglected Child Reporting Act is
5 amended by changing Section 3 as follows:

6 (325 ILCS 5/3) (from Ch. 23, par. 2053)

7 Sec. 3. As used in this Act unless the context otherwise
8 requires:

9 "Adult resident" means any person between 18 and 22 years
10 of age who resides in any facility licensed by the Department
11 under the Child Care Act of 1969. For purposes of this Act, the
12 criteria set forth in the definitions of "abused child" and
13 "neglected child" shall be used in determining whether an
14 adult resident is abused or neglected.

15 "Agency" means a child care facility licensed under
16 Section 2.05 or Section 2.06 of the Child Care Act of 1969 and
17 includes a transitional living program that accepts children
18 and adult residents for placement who are in the guardianship
19 of the Department.

20 "Blatant disregard" means an incident where the real,
21 significant, and imminent risk of harm would be so obvious to a
22 reasonable parent or caretaker that it is unlikely that a
23 reasonable parent or caretaker would have exposed the child to

1 the danger without exercising precautionary measures to
2 protect the child from harm. With respect to a person working
3 at an agency in his or her professional capacity with a child
4 or adult resident, "blatant disregard" includes a failure by
5 the person to perform job responsibilities intended to protect
6 the child's or adult resident's health, physical well-being,
7 or welfare, and, when viewed in light of the surrounding
8 circumstances, evidence exists that would cause a reasonable
9 person to believe that the child was neglected. With respect
10 to an agency, "blatant disregard" includes a failure to
11 implement practices that ensure the health, physical
12 well-being, or welfare of the children and adult residents
13 residing in the facility.

14 "Child" means any person under the age of 18 years, unless
15 legally emancipated by reason of marriage or entry into a
16 branch of the United States armed services.

17 "Department" means Department of Children and Family
18 Services.

19 "Local law enforcement agency" means the police of a city,
20 town, village or other incorporated area or the sheriff of an
21 unincorporated area or any sworn officer of the Illinois
22 Department of State Police.

23 "Abused child" means a child whose parent or immediate
24 family member, or any person responsible for the child's
25 welfare, or any individual residing in the same home as the
26 child, or a paramour of the child's parent:

1 (a) inflicts, causes to be inflicted, or allows to be
2 inflicted upon such child physical injury, by other than
3 accidental means, which causes death, disfigurement,
4 impairment of physical or emotional health, or loss or
5 impairment of any bodily function;

6 (b) creates a substantial risk of physical injury to
7 such child by other than accidental means which would be
8 likely to cause death, disfigurement, impairment of
9 physical or emotional health, or loss or impairment of any
10 bodily function;

11 (c) commits or allows to be committed any sex offense
12 against such child, as such sex offenses are defined in
13 the Criminal Code of 2012 or in the Wrongs to Children Act,
14 and extending those definitions of sex offenses to include
15 children under 18 years of age;

16 (d) commits or allows to be committed an act or acts of
17 torture upon such child;

18 (e) inflicts excessive corporal punishment or, in the
19 case of a person working for an agency who is prohibited
20 from using corporal punishment, inflicts corporal
21 punishment upon a child or adult resident with whom the
22 person is working in his or her professional capacity;

23 (f) commits or allows to be committed the offense of
24 female genital mutilation, as defined in Section 12-34 of
25 the Criminal Code of 2012, against the child;

26 (g) causes to be sold, transferred, distributed, or

1 given to such child under 18 years of age, a controlled
2 substance as defined in Section 102 of the Illinois
3 Controlled Substances Act in violation of Article IV of
4 the Illinois Controlled Substances Act or in violation of
5 the Methamphetamine Control and Community Protection Act,
6 except for controlled substances that are prescribed in
7 accordance with Article III of the Illinois Controlled
8 Substances Act and are dispensed to such child in a manner
9 that substantially complies with the prescription; or

10 (h) commits or allows to be committed the offense of
11 involuntary servitude, involuntary sexual servitude of a
12 minor, or trafficking in persons as defined in Section
13 10-9 of the Criminal Code of 2012 against the child.

14 A child shall not be considered abused for the sole reason
15 that the child has been relinquished in accordance with the
16 Abandoned Newborn Infant Protection Act.

17 "Neglected child" means any child who is not receiving the
18 proper or necessary nourishment or medically indicated
19 treatment including food or care not provided solely on the
20 basis of the present or anticipated mental or physical
21 impairment as determined by a physician acting alone or in
22 consultation with other physicians or otherwise is not
23 receiving the proper or necessary support or medical or other
24 remedial care recognized under State law as necessary for a
25 child's well-being, or other care necessary for his or her
26 well-being, including adequate food, clothing and shelter; or

1 who is subjected to an environment which is injurious insofar
2 as (i) the child's environment creates a likelihood of harm to
3 the child's health, physical well-being, or welfare and (ii)
4 the likely harm to the child is the result of a blatant
5 disregard of parent, caretaker, person responsible for the
6 child's welfare, or agency responsibilities; or who is
7 abandoned by his or her parents or other person responsible
8 for the child's welfare without a proper plan of care; or who
9 has been provided with interim crisis intervention services
10 under Section 3-5 of the Juvenile Court Act of 1987 and whose
11 parent, guardian, or custodian refuses to permit the child to
12 return home and no other living arrangement agreeable to the
13 parent, guardian, or custodian can be made, and the parent,
14 guardian, or custodian has not made any other appropriate
15 living arrangement for the child; or who is a newborn infant
16 whose blood, urine, or meconium contains any amount of a
17 controlled substance as defined in subsection (f) of Section
18 102 of the Illinois Controlled Substances Act or a metabolite
19 thereof, with the exception of a controlled substance or
20 metabolite thereof whose presence in the newborn infant is the
21 result of medical treatment administered to the mother or the
22 newborn infant. A child shall not be considered neglected for
23 the sole reason that the child's parent or other person
24 responsible for his or her welfare has left the child in the
25 care of an adult relative for any period of time. A child shall
26 not be considered neglected for the sole reason that the child

1 has been relinquished in accordance with the Abandoned Newborn
2 Infant Protection Act. A child shall not be considered
3 neglected or abused for the sole reason that such child's
4 parent or other person responsible for his or her welfare
5 depends upon spiritual means through prayer alone for the
6 treatment or cure of disease or remedial care as provided
7 under Section 4 of this Act. A child shall not be considered
8 neglected or abused solely because the child is not attending
9 school in accordance with the requirements of Article 26 of
10 The School Code, as amended.

11 "Child Protective Service Unit" means certain specialized
12 State employees of the Department assigned by the Director to
13 perform the duties and responsibilities as provided under
14 Section 7.2 of this Act.

15 "Near fatality" means an act that, as certified by a
16 physician, places the child in serious or critical condition,
17 including acts of great bodily harm inflicted upon children
18 under 13 years of age, and as otherwise defined by Department
19 rule.

20 "Great bodily harm" includes bodily injury which creates a
21 high probability of death, or which causes serious permanent
22 disfigurement, or which causes a permanent or protracted loss
23 or impairment of the function of any bodily member or organ, or
24 other serious bodily harm.

25 "Person responsible for the child's welfare" means the
26 child's parent; guardian; foster parent; relative caregiver;

1 any person responsible for the child's welfare in a public or
2 private residential agency or institution; any person
3 responsible for the child's welfare within a public or private
4 profit or not for profit child care facility; or any other
5 person responsible for the child's welfare at the time of the
6 alleged abuse or neglect, including any person who commits or
7 allows to be committed, ~~that is the custodian of a child under~~
8 ~~18 years of age who commits or allows to be committed,~~ against
9 the child, the offense of involuntary servitude, involuntary
10 sexual servitude of a minor, or trafficking in persons for
11 forced labor or services, as provided in Section 10-9 of the
12 Criminal Code of 2012, including but not limited to the
13 custodian of the minor, or any person who came to know the
14 child through an official capacity or position of trust,
15 including but not limited to health care professionals,
16 educational personnel, recreational supervisors, members of
17 the clergy, and volunteers or support personnel in any setting
18 where children may be subject to abuse or neglect.

19 "Temporary protective custody" means custody within a
20 hospital or other medical facility or a place previously
21 designated for such custody by the Department, subject to
22 review by the Court, including a licensed foster home, group
23 home, or other institution; but such place shall not be a jail
24 or other place for the detention of criminal or juvenile
25 offenders.

26 "An unfounded report" means any report made under this Act

1 for which it is determined after an investigation that no
2 credible evidence of abuse or neglect exists.

3 "An indicated report" means a report made under this Act
4 if an investigation determines that credible evidence of the
5 alleged abuse or neglect exists.

6 "An undetermined report" means any report made under this
7 Act in which it was not possible to initiate or complete an
8 investigation on the basis of information provided to the
9 Department.

10 "Subject of report" means any child reported to the
11 central register of child abuse and neglect established under
12 Section 7.7 of this Act as an alleged victim of child abuse or
13 neglect and the parent or guardian of the alleged victim or
14 other person responsible for the alleged victim's welfare who
15 is named in the report or added to the report as an alleged
16 perpetrator of child abuse or neglect.

17 "Perpetrator" means a person who, as a result of
18 investigation, has been determined by the Department to have
19 caused child abuse or neglect.

20 "Member of the clergy" means a clergyman or practitioner
21 of any religious denomination accredited by the religious body
22 to which he or she belongs.

23 (Source: P.A. 99-350, eff. 6-1-16; 100-733, eff. 1-1-19.)

24 Section 10. The Criminal Code of 2012 is amended by
25 changing Sections 11-0.1, 11-1.60, 11-20.1, 11-1.70, and 26-4

1 as follows:

2 (720 ILCS 5/11-0.1)

3 Sec. 11-0.1. Definitions. In this Article, unless the
4 context clearly requires otherwise, the following terms are
5 defined as indicated:

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

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

12 "Advance prostitution" means:

13 (1) Soliciting for a prostitute by performing any of
14 the following acts when acting other than as a prostitute
15 or a patron of a prostitute:

16 (A) Soliciting another for the purpose of
17 prostitution.

18 (B) Arranging or offering to arrange a meeting of
19 persons for the purpose of prostitution.

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

22 (2) Keeping a place of prostitution by controlling or
23 exercising control over the use of any place that could
24 offer seclusion or shelter for the practice of
25 prostitution and performing any of the following acts when

1 acting other than as a prostitute or a patron of a
2 prostitute:

3 (A) Knowingly granting or permitting the use of
4 the place for the purpose of prostitution.

5 (B) Granting or permitting the use of the place
6 under circumstances from which he or she could
7 reasonably know that the place is used or is to be used
8 for purposes of prostitution.

9 (C) Permitting the continued use of the place
10 after becoming aware of facts or circumstances from
11 which he or she should reasonably know that the place
12 is being used for purposes of prostitution.

13 "Agency". See Section 11-9.5.

14 "Arranges". See Section 11-6.5.

15 "Bodily harm" means physical harm, and includes, but is
16 not limited to, sexually transmitted disease, pregnancy, and
17 impotence.

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

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

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

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

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

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

24 "Consent" means a freely given agreement to the act of
25 sexual penetration or sexual conduct in question. Lack of
26 verbal or physical resistance or submission by the victim

1 resulting from the use of force or threat of force by the
2 accused shall not constitute consent. The manner of dress of
3 the victim at the time of the offense shall not constitute
4 consent. ~~See Section 11-1.70.~~

5 "Custody". See Section 11-9.2.

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

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

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

9 "Disseminate". See Section 11-20.1.

10 "Distribute". See Section 11-21.

11 "Family member" means a parent, grandparent, child, aunt,
12 uncle, great-aunt, or great-uncle, whether by whole blood,
13 half-blood, or adoption, and includes a step-grandparent,
14 step-parent, or step-child. "Family member" also means, if the
15 victim is a child under 18 years of age, an accused who has
16 resided in the household with the child continuously for at
17 least 6 months.

18 "Force or threat of force" means the use of force or
19 violence or the threat of force or violence, including, but
20 not limited to, the following situations:

21 (1) when the accused threatens to use force or
22 violence on the victim or on any other person, and the
23 victim under the circumstances reasonably believes that
24 the accused has the ability to execute that threat; or

25 (2) when the accused overcomes the victim by use of
26 superior strength or size, physical restraint, or physical

1 confinement.

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

3 "Loiter". See Section 9.3.

4 "Material". See Section 11-21.

5 "Minor". See Section 11-21.

6 "Nudity". See Section 11-21.

7 "Obscene". See Section 11-20.

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

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

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

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

13 "Playground". See Section 11-9.3.

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

15 "Produce". See Section 11-20.1.

16 "Profit from prostitution" means, when acting other than
17 as a prostitute, to receive anything of value for personally
18 rendered prostitution services or to receive anything of value
19 from a prostitute, if the thing received is not for lawful
20 consideration and the person knows it was earned in whole or in
21 part from the practice of prostitution.

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

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

24 "Reproduce". See Section 11-20.1.

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

26 "School". See Section 11-9.3.

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

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

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

4 "Sexual conduct" means any knowing touching or fondling by
5 the victim or the accused, either directly or through
6 clothing, of the sex organs, anus, or breast of the victim or
7 the accused, or any part of the body of a child under 13 years
8 of age, or any transfer or transmission of semen by the accused
9 upon any part of the clothed or unclothed body of the victim,
10 for the purpose of sexual gratification or arousal of the
11 victim or the accused.

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

13 "Sexual penetration" means any contact, however slight,
14 between the sex organ or anus of one person and an object or
15 the sex organ, mouth, or anus of another person, or any
16 intrusion, however slight, of any part of the body of one
17 person or of any animal or object into the sex organ or anus of
18 another person, including, but not limited to, cunnilingus,
19 fellatio, or anal penetration. Evidence of emission of semen
20 is not required to prove sexual penetration.

21 "Solicit". See Section 11-6.

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

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

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

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

26 "Unable to give knowing consent" includes when the accused

1 administers any intoxicating or anesthetic substance, or any
2 controlled substance causing the victim to become unconscious
3 of the nature of the act and this condition was known, or
4 reasonably should have been known by the accused. As used in
5 this paragraph, "unconscious of the nature of the act" means
6 incapable of resisting because the victim meets any one of the
7 following conditions:

8 (1) was unconscious or asleep;

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

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

14 (4) was not aware, knowing, perceiving, or cognizant
15 of the essential characteristics of the act due to the
16 perpetrator's fraudulent representation that the sexual
17 penetration served a professional purpose when it served
18 no professional purpose.

19 A victim is presumed "unable to give knowing consent" when
20 the victim:

21 (1) is committed to the care and custody or
22 supervision of the Illinois Department of Corrections
23 (IDOC) and the accused is an employee or volunteer who is
24 not married to the victim who knows or reasonably should
25 know that the victim is committed to the care and custody
26 or supervision of such department;

1 (2) is committed to or placed with the Department of
2 Children and Family Services (DCFS) and in residential
3 care, and the accused employee is not married to the
4 victim, and knows or reasonably should know that the
5 victim is committed to or placed with DCFS and in
6 residential care;

7 (3) is a client or patient and the accused is a health
8 care provider or mental health care provider and the
9 sexual conduct or sexual penetration occurs during a
10 treatment session, consultation, interview, or
11 examination;

12 (4) is a resident or inpatient of a residential
13 facility and the accused is an employee of the facility
14 who is not married to such resident or inpatient who
15 provides direct care services, case management services,
16 medical or other clinical services, habilitative services
17 or direct supervision of the residents in the facility in
18 which the resident resides; or an officer or other
19 employee, consultant, contractor or volunteer of the
20 residential facility, who knows or reasonably should know
21 that the person is a resident of such facility; or

22 (5) is detained or otherwise in the custody of a
23 police officer, peace officer, or other law enforcement
24 official who: (i) is detaining or maintaining custody of
25 such person; or (ii) knows, or reasonably should know,
26 that at the time of the offense, such person was detained

1 or in custody and the police officer, peace officer, or
2 other law enforcement official is not married to such
3 detainee.

4 "Victim" means a person alleging to have been subjected to
5 an offense prohibited by Section 11-1.20, 11-1.30, 11-1.40,
6 11-1.50, or 11-1.60 of this Code.

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

8 (720 ILCS 5/11-1.60) (was 720 ILCS 5/12-16)

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

10 (a) A person commits aggravated criminal sexual abuse if
11 that person commits criminal sexual abuse and any of the
12 following aggravating circumstances exist (i) during the
13 commission of the offense or (ii) for purposes of paragraph
14 (7), as part of the same course of conduct as the commission of
15 the offense:

16 (1) the person displays, threatens to use, or uses a
17 dangerous weapon or any other object fashioned or used in
18 a manner that leads the victim, under the circumstances,
19 reasonably to believe that the object is a dangerous
20 weapon;

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

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

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

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

1 (6) the person commits the criminal sexual abuse
2 during the course of committing or attempting to commit
3 any other felony; or

4 (7) the person delivers (by injection, inhalation,
5 ingestion, transfer of possession, or any other means) any
6 controlled substance to the victim for other than medical
7 purposes without the victim's consent or by threat or
8 deception.

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

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

13 (1) that person is 17 years of age or over and: (i)
14 commits an act of sexual conduct with a victim who is under
15 13 years of age; or (ii) commits an act of sexual conduct
16 with a victim who is at least 13 years of age but under 17
17 years of age and the person uses force or threat of force
18 to commit the act; or

19 (2) that person is under 17 years of age and: (i)
20 commits an act of sexual conduct with a victim who is under
21 9 years of age; or (ii) commits an act of sexual conduct
22 with a victim who is at least 9 years of age but under 17
23 years of age and the person uses force or threat of force
24 to commit the act.

25 (d) A person commits aggravated criminal sexual abuse if
26 that person commits an act of sexual penetration or sexual

1 conduct with a victim who is at least 13 years of age but under
2 17 years of age and the person is at least 5 years older than
3 the victim.

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

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

12 (g) Sentence. Aggravated criminal sexual abuse for a
13 violation of subsection (a), (b), (c), (d) or (e) of this
14 Section is a Class 2 felony. Aggravated criminal sexual abuse
15 for a violation of subsection (f) of this Section is a Class 1
16 felony. ~~Aggravated criminal sexual abuse is a Class 2 felony.~~
17 (Source: P.A. 99-143, eff. 7-27-15.)

18 (720 ILCS 5/11-1.70) (was 720 ILCS 5/12-17)

19 Sec. 11-1.70. Defenses with respect to offenses described
20 in Sections 11-1.20 through 11-1.60.

21 (a) It shall be a defense to any offense under Section
22 11-1.20, 11-1.30, 11-1.40, 11-1.50, or 11-1.60 of this Code
23 where force or threat of force is an element of the offense
24 that the victim consented. ~~"Consent" means a freely given~~
25 ~~agreement to the act of sexual penetration or sexual conduct~~

1 ~~in question. Lack of verbal or physical resistance or~~
2 ~~submission by the victim resulting from the use of force or~~
3 ~~threat of force by the accused shall not constitute consent.~~
4 ~~The manner of dress of the victim at the time of the offense~~
5 ~~shall not constitute consent.~~

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

10 (c) A person who initially consents to sexual penetration
11 or sexual conduct is not deemed to have consented to any sexual
12 penetration or sexual conduct that occurs after he or she
13 withdraws consent during the course of that sexual penetration
14 or sexual conduct.

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

16 (720 ILCS 5/11-20.1) (from Ch. 38, par. 11-20.1)

17 Sec. 11-20.1. Child pornography.

18 (a) A person commits child pornography who:

19 (1) films, videotapes, photographs, or otherwise
20 depicts or portrays by means of any similar visual medium
21 or reproduction or depicts by computer any child whom he
22 or she knows or reasonably should know to be under the age
23 of 18 or any person with a severe or profound intellectual
24 disability where such child or person with a severe or
25 profound intellectual disability is:

1 (i) actually or by simulation engaged in any act
2 of sexual penetration or sexual conduct with any
3 person or animal; or

4 (ii) actually or by simulation engaged in any act
5 of sexual penetration or sexual conduct involving the
6 sex organs of the child or person with a severe or
7 profound intellectual disability and the mouth, anus,
8 or sex organs of another person or animal; or which
9 involves the mouth, anus or sex organs of the child or
10 person with a severe or profound intellectual
11 disability and the sex organs of another person or
12 animal; or

13 (iii) actually or by simulation engaged in any act
14 of masturbation; or

15 (iv) actually or by simulation portrayed as being
16 the object of, or otherwise engaged in, any act of lewd
17 fondling, touching, or caressing involving another
18 person or animal; or

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

21 (vi) actually or by simulation portrayed or
22 depicted as bound, fettered, or subject to sadistic,
23 masochistic, or sadomasochistic abuse in any sexual
24 context; or

25 (vii) depicted or portrayed in any pose, posture
26 or setting involving a lewd exhibition of the

1 unclothed or transparently clothed genitals, pubic
2 area, buttocks, or, if such person is female, a fully
3 or partially developed breast of the child or other
4 person; or

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

16 (3) with knowledge of the subject matter or theme
17 thereof, produces any stage play, live performance, film,
18 videotape or other similar visual portrayal or depiction
19 by computer which includes a child whom the person knows
20 or reasonably should know to be under the age of 18 or a
21 person with a severe or profound intellectual disability
22 engaged in any activity described in subparagraphs (i)
23 through (vii) of paragraph (1) of this subsection; or

24 (4) solicits, uses, persuades, induces, entices, or
25 coerces any child whom he or she knows or reasonably
26 should know to be under the age of 18 or a person with a

1 severe or profound intellectual disability to appear in
2 any stage play, live presentation, film, videotape,
3 photograph or other similar visual reproduction or
4 depiction by computer in which the child or person with a
5 severe or profound intellectual disability is or will be
6 depicted, actually or by simulation, in any act, pose or
7 setting described in subparagraphs (i) through (vii) of
8 paragraph (1) of this subsection; or

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

21 (6) with knowledge of the nature or content thereof,
22 possesses any film, videotape, photograph or other similar
23 visual reproduction or depiction by computer of any child
24 or person with a severe or profound intellectual
25 disability whom the person knows or reasonably should know
26 to be under the age of 18 or to be a person with a severe

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

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

15 (a-5) The possession of each individual film, videotape,
16 photograph, or other similar visual reproduction or depiction
17 by computer in violation of this Section constitutes a single
18 and separate violation. This subsection (a-5) does not apply
19 to multiple copies of the same film, videotape, photograph, or
20 other similar visual reproduction or depiction by computer
21 that are identical to each other.

22 (b) (1) It shall be an affirmative defense to a charge of
23 child pornography that the defendant reasonably believed,
24 under all of the circumstances, that the child was 18 years of
25 age or older or that the person was not a person with a severe
26 or profound intellectual disability but only where, prior to

1 the act or acts giving rise to a prosecution under this
2 Section, he or she took some affirmative action or made a
3 bonafide inquiry designed to ascertain whether the child was
4 18 years of age or older or that the person was not a person
5 with a severe or profound intellectual disability and his or
6 her reliance upon the information so obtained was clearly
7 reasonable.

8 (1.5) Telecommunications carriers, commercial mobile
9 service providers, and providers of information services,
10 including, but not limited to, Internet service providers and
11 hosting service providers, are not liable under this Section
12 by virtue of the transmission, storage, or caching of
13 electronic communications or messages of others or by virtue
14 of the provision of other related telecommunications,
15 commercial mobile services, or information services used by
16 others in violation of this Section.

17 (2) (Blank).

18 (3) The charge of child pornography shall not apply to the
19 performance of official duties by law enforcement or
20 prosecuting officers or persons employed by law enforcement or
21 prosecuting agencies, court personnel or attorneys, nor to
22 bonafide treatment or professional education programs
23 conducted by licensed physicians, psychologists or social
24 workers. In any criminal proceeding, any property or material
25 that constitutes child pornography shall remain in the care,
26 custody, and control of either the State or the court. A motion

1 to view the evidence shall comply with subsection (e-5) of
2 this Section.

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

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

15 (6) Any violation of paragraph (1), (2), (3), (4), (5), or
16 (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) If the violation does not involve a film, videotape,
22 or other moving depiction, a violation of paragraph (1), (4),
23 (5), or (7) of subsection (a) is a Class 1 felony with a
24 mandatory minimum fine of \$2,000 and a maximum fine of
25 \$100,000. If the violation involves a film, videotape, or
26 other moving depiction, a violation of paragraph (1), (4),

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

25 (c-5) Where the child depicted is under the age of 13, a
26 violation of paragraph (1), (2), (3), (4), (5), or (7) of

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

1 a child, or any of the offenses formerly known as rape, deviate
2 sexual assault, indecent liberties with a child, or aggravated
3 indecent liberties with a child where the victim was under the
4 age of 18 years or an offense that is substantially equivalent
5 to those offenses, is guilty of a Class 1 felony with a
6 mandatory minimum fine of \$1,000 and a maximum fine of
7 \$100,000. The issue of whether the child depicted is under the
8 age of 13 is an element of the offense to be resolved by the
9 trier of fact.

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

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

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

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

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

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

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

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

26 (4) "Depict by computer" means to generate or create,

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

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

11 (6) "Computer", "computer program", and "data" have
12 the meanings ascribed to them in Section 17.05 of this
13 Code.

14 (7) For the purposes of this Section, "child
15 pornography" includes a film, videotape, photograph, or
16 other similar visual medium or reproduction or depiction
17 by computer that is, or appears to be, that of a person,
18 either in part, or in total, under the age of 18 or a
19 person with a severe or profound intellectual disability,
20 regardless of the method by which the film, videotape,
21 photograph, or other similar visual medium or reproduction
22 or depiction by computer is created, adopted, or modified
23 to appear as such. "Child pornography" also includes a
24 film, videotape, photograph, or other similar visual
25 medium or reproduction or depiction by computer that is
26 advertised, promoted, presented, described, or distributed

1 in such a manner that conveys the impression that the
2 film, videotape, photograph, or other similar visual
3 medium or reproduction or depiction by computer is of a
4 person under the age of 18 or a person with a severe or
5 profound intellectual disability.

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

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

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

13 (ii) In addition, Public Act 88-680 was entitled
14 "AN ACT to create a Safe Neighborhoods Law". (A)
15 Article 5 was entitled JUVENILE JUSTICE and amended
16 the Juvenile Court Act of 1987. (B) Article 15 was
17 entitled GANGS and amended various provisions of the
18 Criminal Code of 1961 and the Unified Code of
19 Corrections. (C) Article 20 was entitled ALCOHOL ABUSE
20 and amended various provisions of the Illinois Vehicle
21 Code. (D) Article 25 was entitled DRUG ABUSE and
22 amended the Cannabis Control Act and the Illinois
23 Controlled Substances Act. (E) Article 30 was entitled
24 FIREARMS and amended the Criminal Code of 1961 and the
25 Code of Criminal Procedure of 1963. (F) Article 35
26 amended the Criminal Code of 1961, the Rights of Crime

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

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

22 (iv) Child pornography is a vital concern to the
23 people of this State and the validity of future
24 prosecutions under the child pornography statute of
25 the Criminal Code of 1961 is in grave doubt.

26 (2) It is the purpose of this amendatory Act of 1999 to

1 prevent or minimize any problems relating to prosecutions
2 for child pornography that may result from challenges to
3 the constitutional validity of Public Act 88-680 by
4 re-enacting the Section relating to child pornography that
5 was included in Public Act 88-680.

6 (3) This amendatory Act of 1999 re-enacts Section
7 11-20.1 of the Criminal Code of 1961, as it has been
8 amended. This re-enactment is intended to remove any
9 question as to the validity or content of that Section; it
10 is not intended to supersede any other Public Act that
11 amends the text of the Section as set forth in this
12 amendatory Act of 1999. The material is shown as existing
13 text (i.e., without underscoring) because, as of the time
14 this amendatory Act of 1999 was prepared, *People v. Dainty*
15 was subject to appeal to the Illinois Supreme Court.

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

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

24 (720 ILCS 5/26-4) (from Ch. 38, par. 26-4)

25 Sec. 26-4. Unauthorized video recording and live video

1 transmission.

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

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

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

15 (a-10) It is unlawful for any person to knowingly make a
16 video record or transmit live video of another person's
17 intimate parts ~~person under or through the clothing worn by~~
18 ~~that other person~~ for the purpose of viewing the body of or the
19 undergarments worn by that other person without that person's
20 consent. For the purposes of this subsection (a-10), "intimate
21 parts" means the fully unclothed, partially unclothed, or
22 transparently clothed genitals, pubic area, anus, or if the
23 person is female, a partially or fully exposed nipple,
24 including exposure through transparent clothing.

25 (a-15) It is unlawful for any person to place or cause to
26 be placed a device that makes a video record or transmits a

1 live video in a restroom, tanning bed, tanning salon, locker
2 room, changing room, or hotel bedroom with the intent to make a
3 video record or transmit live video of another person without
4 that person's consent.

5 (a-20) 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 with the intent to make a video record or transmit
8 live video of another person in that other person's residence
9 without that person's consent.

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

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

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

20 (2) The making of a video record or transmission of
21 live video by correctional officials for security reasons
22 or for investigation of alleged misconduct involving a
23 person committed to the Department of Corrections; and

24 (3) The making of a video record or transmission of
25 live video in a locker room by a reporter or news medium,
26 as those terms are defined in Section 8-902 of the Code of

1 Civil Procedure, where the reporter or news medium has
2 been granted access to the locker room by an appropriate
3 authority for the purpose of conducting interviews.

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

8 (d) Sentence.

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

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

13 (3) A violation of subsection (a-25) is a Class 3
14 felony.

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

20 (5) A violation of subsection (a-25) is a Class 2
21 felony if the victim is a person under 18 years of age or
22 if the violation is committed by an individual who is
23 required to register as a sex offender under the Sex
24 Offender Registration Act.

25 (e) For purposes of this Section:

26 (1) "Residence" includes a rental dwelling, but does

1 not include stairwells, corridors, laundry facilities, or
2 additional areas in which the general public has access.

3 (2) "Video record" means and includes any videotape,
4 photograph, film, or other electronic or digital recording
5 of a still or moving visual image; and "live video" means
6 and includes any real-time or contemporaneous electronic
7 or digital transmission of a still or moving visual image.

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