



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB4889

Introduced 2/7/2024, by Rep. Dave Vella

SYNOPSIS AS INTRODUCED:

720 ILCS 5/11-20.1

from Ch. 38, par. 11-20.1

Amends the Criminal Code of 2012. Provides that possession of child pornography that does not involve a film, videotape, or other moving depiction is a Class 2 (rather than a Class 3) felony with a mandatory minimum fine of \$1,000 and a maximum fine of \$100,000. Provides that possession of child pornography that involves a film, videotape, or other moving depiction is a Class 1 (rather than a Class 2) felony with a mandatory minimum fine of \$1,000 and a maximum fine of \$100,000. Provides that where the child depicted is under the age of 13, the penalty for a first offense of possession of child pornography is a Class 1 (rather than a Class 2) felony with a mandatory minimum fine of \$1,000 and a maximum fine of \$100,000. Provides that where the child depicted is under 13 years of age, possession of child pornography, where the defendant has previously been convicted under the laws of this State or any other state of the offense of child pornography, aggravated child pornography, aggravated criminal sexual abuse, aggravated criminal sexual assault, predatory criminal sexual assault of a child, or any of the offenses formerly known as rape, deviate sexual assault, indecent liberties with a child, or aggravated indecent liberties with a child where the victim was under the age of 18 years or an offense that is substantially equivalent to those offenses, is guilty of a Class X (rather than a Class 1) felony with a mandatory minimum fine of \$1,000 and a maximum fine of \$100,000.

LRB103 35581 RLC 65653 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 Section 11-20.1 as follows:

6 (720 ILCS 5/11-20.1) (from Ch. 38, par. 11-20.1)

7 Sec. 11-20.1. Child pornography.

8 (a) A person commits child pornography who:

9 (1) films, videotapes, photographs, or otherwise
10 depicts or portrays by means of any similar visual medium
11 or reproduction or depicts by computer any child whom he
12 or she knows or reasonably should know to be under the age
13 of 18 or any person with a severe or profound intellectual
14 disability where such child or person with a severe or
15 profound intellectual disability is:

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

19 (ii) actually or by simulation engaged in any act
20 of sexual penetration or sexual conduct involving the
21 sex organs of the child or person with a severe or
22 profound intellectual disability and the mouth, anus,
23 or sex organs of another person or animal; or which

1 involves the mouth, anus or sex organs of the child or
2 person with a severe or profound intellectual
3 disability and the sex organs of another person or
4 animal; or

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

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

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

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

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

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

1 or depiction by computer of any child or person with a
2 severe or profound intellectual disability whom the person
3 knows or reasonably should know to be under the age of 18
4 or to be a person with a severe or profound intellectual
5 disability, engaged in any activity described in
6 subparagraphs (i) through (vii) of paragraph (1) of this
7 subsection; or

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

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

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

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

22 (7) solicits, or knowingly uses, persuades, induces,
23 entices, or coerces, a person to provide a child under the
24 age of 18 or a person with a severe or profound
25 intellectual disability to appear in any videotape,
26 photograph, film, stage play, live presentation, or other

1 similar visual reproduction or depiction by computer in
2 which the child or person with a severe or profound
3 intellectual disability will be depicted, actually or by
4 simulation, in any act, pose, or setting described in
5 subparagraphs (i) through (vii) of paragraph (1) of this
6 subsection.

7 (a-5) The possession of each individual film, videotape,
8 photograph, or other similar visual reproduction or depiction
9 by computer in violation of this Section constitutes a single
10 and separate violation. This subsection (a-5) does not apply
11 to multiple copies of the same film, videotape, photograph, or
12 other similar visual reproduction or depiction by computer
13 that are identical to each other.

14 (b) (1) It shall be an affirmative defense to a charge of
15 child pornography that the defendant reasonably believed,
16 under all of the circumstances, that the child was 18 years of
17 age or older or that the person was not a person with a severe
18 or profound intellectual disability but only where, prior to
19 the act or acts giving rise to a prosecution under this
20 Section, he or she took some affirmative action or made a
21 bonafide inquiry designed to ascertain whether the child was
22 18 years of age or older or that the person was not a person
23 with a severe or profound intellectual disability and his or
24 her reliance upon the information so obtained was clearly
25 reasonable.

26 (1.5) Telecommunications carriers, commercial mobile

1 service providers, and providers of information services,
2 including, but not limited to, Internet service providers and
3 hosting service providers, are not liable under this Section
4 by virtue of the transmission, storage, or caching of
5 electronic communications or messages of others or by virtue
6 of the provision of other related telecommunications,
7 commercial mobile services, or information services used by
8 others in violation of this Section.

9 (2) (Blank).

10 (3) The charge of child pornography shall not apply to the
11 performance of official duties by law enforcement or
12 prosecuting officers or persons employed by law enforcement or
13 prosecuting agencies, court personnel or attorneys, nor to
14 bonafide treatment or professional education programs
15 conducted by licensed physicians, psychologists or social
16 workers. In any criminal proceeding, any property or material
17 that constitutes child pornography shall remain in the care,
18 custody, and control of either the State or the court. A motion
19 to view the evidence shall comply with subsection (e-5) of
20 this Section.

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

26 (5) The charge of child pornography does not apply to a

1 person who does not voluntarily possess a film, videotape, or
2 visual reproduction or depiction by computer in which child
3 pornography is depicted. Possession is voluntary if the
4 defendant knowingly procures or receives a film, videotape, or
5 visual reproduction or depiction for a sufficient time to be
6 able to terminate his or her possession.

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

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

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

17 (c-5) Where the child depicted is under the age of 13, a
18 violation of paragraph (1), (2), (3), (4), (5), or (7) of
19 subsection (a) is a Class X felony with a mandatory minimum
20 fine of \$2,000 and a maximum fine of \$100,000. ~~Where the child~~
21 ~~depicted is under the age of 13, a violation of paragraph (6)~~
22 ~~of subsection (a) is a Class 2 felony with a mandatory minimum~~
23 ~~fine of \$1,000 and a maximum fine of \$100,000.~~ Where the child
24 depicted is under the age of 13, a person who commits a
25 violation of paragraph (1), (2), (3), (4), (5), or (7) of
26 subsection (a) where the defendant has previously been

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

1 Class X ± felony with a mandatory minimum fine of \$1,000 and a
2 maximum fine of \$100,000. The issue of whether the child
3 depicted is under the age of 13 is an element of the offense to
4 be resolved by the trier of fact.

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

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

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

25 (e-5) Upon the conclusion of a case brought under this
26 Section, the court shall seal all evidence depicting a victim

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

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

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

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

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

21 (4) "Depict by computer" means to generate or create,
22 or cause to be created or generated, a computer program or
23 data that, after being processed by a computer either
24 alone or in conjunction with one or more computer
25 programs, results in a visual depiction on a computer
26 monitor, screen, or display.

1 (5) "Depiction by computer" means a computer program
2 or 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 (6) "Computer", "computer program", and "data" have
7 the meanings ascribed to them in Section 17.05 of this
8 Code.

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

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

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

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

8 (ii) In addition, Public Act 88-680 was entitled
9 "AN ACT to create a Safe Neighborhoods Law". (A)
10 Article 5 was entitled JUVENILE JUSTICE and amended
11 the Juvenile Court Act of 1987. (B) Article 15 was
12 entitled GANGS and amended various provisions of the
13 Criminal Code of 1961 and the Unified Code of
14 Corrections. (C) Article 20 was entitled ALCOHOL ABUSE
15 and amended various provisions of the Illinois Vehicle
16 Code. (D) Article 25 was entitled DRUG ABUSE and
17 amended the Cannabis Control Act and the Illinois
18 Controlled Substances Act. (E) Article 30 was entitled
19 FIREARMS and amended the Criminal Code of 1961 and the
20 Code of Criminal Procedure of 1963. (F) Article 35
21 amended the Criminal Code of 1961, the Rights of Crime
22 Victims and Witnesses Act, and the Unified Code of
23 Corrections. (G) Article 40 amended the Criminal Code
24 of 1961 to increase the penalty for compelling
25 organization membership of persons. (H) Article 45
26 created the Secure Residential Youth Care Facility

1 Licensing Act and amended the State Finance Act, the
2 Juvenile Court Act of 1987, the Unified Code of
3 Corrections, and the Private Correctional Facility
4 Moratorium Act. (I) Article 50 amended the WIC Vendor
5 Management Act, the Firearm Owners Identification Card
6 Act, the Juvenile Court Act of 1987, the Criminal Code
7 of 1961, the Wrongs to Children Act, and the Unified
8 Code of Corrections.

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

17 (iv) Child pornography is a vital concern to the
18 people of this State and the validity of future
19 prosecutions under the child pornography statute of
20 the Criminal Code of 1961 is in grave doubt.

21 (2) It is the purpose of this amendatory Act of 1999 to
22 prevent or minimize any problems relating to prosecutions
23 for child pornography that may result from challenges to
24 the constitutional validity of Public Act 88-680 by
25 re-enacting the Section relating to child pornography that
26 was included in Public Act 88-680.

1 (3) This amendatory Act of 1999 re-enacts Section
2 11-20.1 of the Criminal Code of 1961, as it has been
3 amended. This re-enactment is intended to remove any
4 question as to the validity or content of that Section; it
5 is not intended to supersede any other Public Act that
6 amends the text of the Section as set forth in this
7 amendatory Act of 1999. The material is shown as existing
8 text (i.e., without underscoring) because, as of the time
9 this amendatory Act of 1999 was prepared, People v. Dainty
10 was subject to appeal to the Illinois Supreme Court.

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

18 (Source: P.A. 101-87, eff. 1-1-20; 102-567, eff. 1-1-22.)