



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004
HB4503

Introduced 02/03/04, by James D. Brosnahan

SYNOPSIS AS INTRODUCED:

720 ILCS 5/11-9.4
720 ILCS 5/11-21

from Ch. 38, par. 11-21

Amends the Criminal Code of 1961. Provides that it is unlawful for a child sex offender to approach or initiate any form of contact with any persons under 18 years of age on a public way. Provides that it is unlawful for a child sex offender to entice, coerce, or encourage any person under 18 years of age to enter or proceed to the entrance of any vehicles, structures, or other real property. Provides that it is a violation of the statute prohibiting the distribution of harmful materials to a child to believe (instead of have knowledge) that the person to whom the harmful materials are being distributed is a child under 18 years of age.

LRB093 18424 RLC 44132 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT in relation to 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 1961 is amended by changing
5 Sections 11-9.4 and 11-21 as follows:

6 (720 ILCS 5/11-9.4)

7 Sec. 11-9.4. Approaching, contacting, residing, or
8 communicating with a child within certain places by child sex
9 offenders prohibited.

10 (a) It is unlawful for a child sex offender to knowingly be
11 present in any public park building or on real property
12 comprising any public park when persons under the age of 18 are
13 present in the building or on the grounds and to approach,
14 contact, or communicate with a child under 18 years of age,
15 unless the offender is a parent or guardian of a person under
16 18 years of age present in the building or on the grounds.

17 (b) It is unlawful for a child sex offender to knowingly
18 loiter on a public way within 500 feet of a public park
19 building or real property comprising any public park while
20 persons under the age of 18 are present in the building or on
21 the grounds and to approach, contact, or communicate with a
22 child under 18 years of age, unless the offender is a parent or
23 guardian of a person under 18 years of age present in the
24 building or on the grounds.

25 (b-5) It is unlawful for a child sex offender to knowingly
26 reside within 500 feet of a playground or a facility providing
27 programs or services exclusively directed toward persons under
28 18 years of age. Nothing in this subsection (b-5) prohibits a
29 child sex offender from residing within 500 feet of a
30 playground or a facility providing programs or services
31 exclusively directed toward persons under 18 years of age if
32 the property is owned by the child sex offender and was

1 purchased before the effective date of this amendatory Act of
2 the 91st General Assembly.

3 (b-6) It is unlawful for a child sex offender to knowingly
4 reside within 500 feet of the victim of the sex offense.
5 Nothing in this subsection (b-6) prohibits a child sex offender
6 from residing within 500 feet of the victim if the property in
7 which the child sex offender resides is owned by the child sex
8 offender and was purchased before the effective date of this
9 amendatory Act of the 92nd General Assembly.

10 This subsection (b-6) does not apply if the victim of the
11 sex offense is 21 years of age or older.

12 (c) It is unlawful for a child sex offender to knowingly
13 operate, manage, be employed by, volunteer at, be associated
14 with, or knowingly be present at any facility providing
15 programs or services exclusively directed towards persons
16 under the age of 18. This does not prohibit a child sex
17 offender from owning the real property upon which the programs
18 or services are offered, provided the child sex offender
19 refrains from being present on the premises for the hours
20 during which the programs or services are being offered.

21 (c-5) It is unlawful for a child sex offender to approach
22 or initiate any form of contact with any persons under 18 years
23 of age on a public way.

24 (c-6) It is unlawful for a child sex offender to entice,
25 coerce, or encourage any person under 18 years of age to enter
26 or proceed to the entrance of any vehicles, structures, or
27 other real property.

28 (d) Definitions. In this Section:

29 (1) "Child sex offender" means any person who:

30 (i) has been charged under Illinois law, or any
31 substantially similar federal law or law of another
32 state, with a sex offense set forth in paragraph (2) of
33 this subsection (d) or the attempt to commit an
34 included sex offense, and:

35 (A) is convicted of such offense or an attempt
36 to commit such offense; or

1 (B) is found not guilty by reason of insanity
2 of such offense or an attempt to commit such
3 offense; or

4 (C) is found not guilty by reason of insanity
5 pursuant to subsection (c) of Section 104-25 of the
6 Code of Criminal Procedure of 1963 of such offense
7 or an attempt to commit such offense; or

8 (D) is the subject of a finding not resulting
9 in an acquittal at a hearing conducted pursuant to
10 subsection (a) of Section 104-25 of the Code of
11 Criminal Procedure of 1963 for the alleged
12 commission or attempted commission of such
13 offense; or

14 (E) is found not guilty by reason of insanity
15 following a hearing conducted pursuant to a
16 federal law or the law of another state
17 substantially similar to subsection (c) of Section
18 104-25 of the Code of Criminal Procedure of 1963 of
19 such offense or of the attempted commission of such
20 offense; or

21 (F) is the subject of a finding not resulting
22 in an acquittal at a hearing conducted pursuant to
23 a federal law or the law of another state
24 substantially similar to subsection (a) of Section
25 104-25 of the Code of Criminal Procedure of 1963
26 for the alleged violation or attempted commission
27 of such offense; or

28 (ii) is certified as a sexually dangerous person
29 pursuant to the Illinois Sexually Dangerous Persons
30 Act, or any substantially similar federal law or the
31 law of another state, when any conduct giving rise to
32 such certification is committed or attempted against a
33 person less than 18 years of age; or

34 (iii) is subject to the provisions of Section 2 of
35 the Interstate Agreements on Sexually Dangerous
36 Persons Act.

1 Convictions that result from or are connected with the
2 same act, or result from offenses committed at the same
3 time, shall be counted for the purpose of this Section as
4 one conviction. Any conviction set aside pursuant to law is
5 not a conviction for purposes of this Section.

6 (2) Except as otherwise provided in paragraph (2.5),
7 "sex offense" means:

8 (i) A violation of any of the following Sections of
9 the Criminal Code of 1961: 10-7 (aiding and abetting
10 child abduction under Section 10-5(b)(10)),
11 10-5(b)(10) (child luring), 11-6 (indecent
12 solicitation of a child), 11-6.5 (indecent
13 solicitation of an adult), 11-9 (public indecency when
14 committed in a school, on the real property comprising
15 a school, on a conveyance owned, leased, or contracted
16 by a school to transport students to or from school or
17 a school related activity, or in a public park), 11-9.1
18 (sexual exploitation of a child), 11-15.1 (soliciting
19 for a juvenile prostitute), 11-17.1 (keeping a place of
20 juvenile prostitution), 11-18.1 (patronizing a
21 juvenile prostitute), 11-19.1 (juvenile pimping),
22 11-19.2 (exploitation of a child), 11-20.1 (child
23 pornography), 11-21 (harmful material), 12-14.1
24 (predatory criminal sexual assault of a child), 12-33
25 (ritualized abuse of a child), 11-20 (obscenity) (when
26 that offense was committed in any school, on real
27 property comprising any school, on any conveyance
28 owned, leased, or contracted by a school to transport
29 students to or from school or a school related
30 activity, or in a public park). An attempt to commit
31 any of these offenses.

32 (ii) A violation of any of the following Sections
33 of the Criminal Code of 1961, when the victim is a
34 person under 18 years of age: 12-13 (criminal sexual
35 assault), 12-14 (aggravated criminal sexual assault),
36 12-15 (criminal sexual abuse), 12-16 (aggravated

1 criminal sexual abuse). An attempt to commit any of
2 these offenses.

3 (iii) A violation of any of the following Sections
4 of the Criminal Code of 1961, when the victim is a
5 person under 18 years of age and the defendant is not a
6 parent of the victim:

7 10-1 (kidnapping),
8 10-2 (aggravated kidnapping),
9 10-3 (unlawful restraint),
10 10-3.1 (aggravated unlawful restraint).

11 An attempt to commit any of these offenses.

12 (iv) A violation of any former law of this State
13 substantially equivalent to any offense listed in
14 clause (2) (i) of this subsection (d).

15 (2.5) For the purposes of subsection (b-5) only, a sex
16 offense means:

17 (i) A violation of any of the following Sections of
18 the Criminal Code of 1961:

19 10-5(b)(10) (child luring), 10-7 (aiding and
20 abetting child abduction under Section
21 10-5(b)(10)), 11-6 (indecent solicitation of a
22 child), 11-6.5 (indecent solicitation of an
23 adult), 11-15.1 (soliciting for a juvenile
24 prostitute), 11-17.1 (keeping a place of juvenile
25 prostitution), 11-18.1 (patronizing a juvenile
26 prostitute), 11-19.1 (juvenile pimping), 11-19.2
27 (exploitation of a child), 11-20.1 (child
28 pornography), 12-14.1 (predatory criminal sexual
29 assault of a child), or 12-33 (ritualized abuse of
30 a child). An attempt to commit any of these
31 offenses.

32 (ii) A violation of any of the following Sections
33 of the Criminal Code of 1961, when the victim is a
34 person under 18 years of age: 12-13 (criminal sexual
35 assault), 12-14 (aggravated criminal sexual assault),
36 12-16 (aggravated criminal sexual abuse), and

1 subsection (a) of Section 12-15 (criminal sexual
2 abuse). An attempt to commit any of these offenses.

3 (iii) A violation of any of the following Sections
4 of the Criminal Code of 1961, when the victim is a
5 person under 18 years of age and the defendant is not a
6 parent of the victim:

7 10-1 (kidnapping),

8 10-2 (aggravated kidnapping),

9 10-3 (unlawful restraint),

10 10-3.1 (aggravated unlawful restraint).

11 An attempt to commit any of these offenses.

12 (iv) A violation of any former law of this State
13 substantially equivalent to any offense listed in this
14 paragraph (2.5) of this subsection.

15 (3) A conviction for an offense of federal law or the
16 law of another state that is substantially equivalent to
17 any offense listed in paragraph (2) of this subsection (d)
18 shall constitute a conviction for the purpose of this
19 Section. A finding or adjudication as a sexually dangerous
20 person under any federal law or law of another state that
21 is substantially equivalent to the Sexually Dangerous
22 Persons Act shall constitute an adjudication for the
23 purposes of this Section.

24 (4) "Public park" includes a park, forest preserve, or
25 conservation area under the jurisdiction of the State or a
26 unit of local government.

27 (5) "Facility providing programs or services directed
28 towards persons under the age of 18" means any facility
29 providing programs or services exclusively directed
30 towards persons under the age of 18.

31 (6) "Loiter" means:

32 (i) Standing, sitting idly, whether or not the
33 person is in a vehicle or remaining in or around public
34 park property.

35 (ii) Standing, sitting idly, whether or not the
36 person is in a vehicle or remaining in or around public

1 park property, for the purpose of committing or
2 attempting to commit a sex offense.

3 (7) "Playground" means a piece of land owned or
4 controlled by a unit of local government that is designated
5 by the unit of local government for use solely or primarily
6 for children's recreation.

7 (e) Sentence. A person who violates this Section is guilty
8 of a Class 4 felony.

9 (Source: P.A. 91-458, eff. 1-1-00; 91-911, eff. 7-7-00; 92-828,
10 eff. 8-22-02.)

11 (720 ILCS 5/11-21) (from Ch. 38, par. 11-21)

12 Sec. 11-21. Harmful material.

13 (a) Elements of the Offense.

14 A person who, believing ~~with knowledge~~ that a person is a
15 child, ~~that is a person~~ under 18 years of age, ~~or who fails to~~
16 ~~exercise reasonable care in ascertaining the true age of a~~
17 ~~child,~~ knowingly distributes to, or sends, or causes to be sent
18 to, or exhibits to, or offers to distribute or exhibit any
19 harmful material to that person ~~a child~~, is guilty of the
20 offense of distribution of harmful material to a child ~~a~~
21 ~~misdemeanor~~.

22 (b) Definitions.

23 (1) Material is harmful if, to the average person, applying
24 contemporary standards, its predominant appeal, taken as a
25 whole, is to prurient interest, that is a shameful or morbid
26 interest in nudity, sex, or excretion, which goes substantially
27 beyond customary limits of candor in description or
28 representation of such matters, and is material the redeeming
29 social importance of which is substantially less than its
30 prurient appeal.

31 (2) Material, as used in this Section means any writing,
32 picture, record or other representation or embodiment.

33 (3) Distribute means to transfer possession of, whether
34 with or without consideration.

35 (4) Knowingly, as used in this section means having

1 knowledge of the contents of the subject matter, or recklessly
2 failing to exercise reasonable inspection which would have
3 disclosed the contents thereof.

4 (c) Interpretation of Evidence.

5 The predominant appeal to prurient interest of the material
6 shall be judged with reference to average children of the same
7 general age of the child to whom such material was offered,
8 distributed, sent or exhibited, unless it appears from the
9 nature of the matter or the circumstances of its dissemination,
10 distribution or exhibition that it is designed for specially
11 susceptible groups, in which case the predominant appeal of the
12 material shall be judged with reference to its intended or
13 probable recipient group.

14 In prosecutions under this section, where circumstances of
15 production, presentation, sale, dissemination, distribution,
16 or publicity indicate the material is being commercially
17 exploited for the sake of its prurient appeal, such evidence is
18 probative with respect to the nature of the material and can
19 justify the conclusion that the redeeming social importance of
20 the material is in fact substantially less than its prurient
21 appeal.

22 (d) Sentence.

23 Distribution of harmful material in violation of this
24 Section is a Class A misdemeanor. A second or subsequent
25 offense is a Class 4 felony. If that person has utilized a
26 computer web cam to send the harmful material, then each
27 offense is a Class 4 felony.

28 (e) Affirmative Defenses.

29 (1) Nothing in this section shall prohibit any public
30 library or any library operated by an accredited institution of
31 higher education from circulating harmful material to any
32 person under 18 years of age, provided such circulation is in
33 aid of a legitimate scientific or educational purpose, and it
34 shall be an affirmative defense in any prosecution for a
35 violation of this section that the act charged was committed in
36 aid of legitimate scientific or educational purposes.

1 (2) Nothing in this section shall prohibit any parent from
2 distributing to his child any harmful material.

3 (3) Proof that the defendant demanded, was shown and acted
4 in reliance upon any of the following documents as proof of the
5 age of a child, shall be a defense to any criminal prosecution
6 under this section: A document issued by the federal government
7 or any state, county or municipal government or subdivision or
8 agency thereof, including, but not limited to, a motor vehicle
9 operator's license, a registration certificate issued under
10 the Federal Selective Service Act or an identification card
11 issued to a member of the armed forces.

12 (4) In the event an advertisement of harmful material as
13 defined in this section culminates in the sale or distribution
14 of such harmful material to a child, under circumstances where
15 there was no personal confrontation of the child by the
16 defendant, his employees or agents, as where the order or
17 request for such harmful material was transmitted by mail,
18 telephone, or similar means of communication, and delivery of
19 such harmful material to the child was by mail, freight, or
20 similar means of transport, it shall be a defense in any
21 prosecution for a violation of this section that the
22 advertisement contained the following statement, or a
23 statement substantially similar thereto, and that the
24 defendant required the purchaser to certify that he was not
25 under 18 years of age and that the purchaser falsely stated
26 that he was not under 18 years of age: "NOTICE: It is unlawful
27 for any person under 18 years of age to purchase the matter
28 herein advertised. Any person under 18 years of age who falsely
29 states that he is not under 18 years of age for the purpose of
30 obtaining the material advertised herein, is guilty of a Class
31 B misdemeanor under the laws of the State of Illinois."

32 (f) Child Falsifying Age.

33 Any person under 18 years of age who falsely states, either
34 orally or in writing, that he is not under the age of 18 years,
35 or who presents or offers to any person any evidence of age and
36 identity which is false or not actually his own for the purpose

1 of ordering, obtaining, viewing, or otherwise procuring or
2 attempting to procure or view any harmful material, is guilty
3 of a Class B misdemeanor.

4 (Source: P.A. 77-2638.)