

**HB0952**



**94TH GENERAL ASSEMBLY**  
**State of Illinois**  
**2005 and 2006**  
**HB0952**

Introduced 2/2/2005, by Rep. John A. Fritchey

**SYNOPSIS AS INTRODUCED:**

720 ILCS 5/11-21

from Ch. 38, par. 11-21

Amends the Criminal Code of 1961. Makes a technical change in a Section concerning the distribution of harmful material to a child.

LRB094 09283 RXD 39521 b

**A BILL FOR**

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 1961 is amended by changing  
5 Section 11-21 as follows:

6 (720 ILCS 5/11-21) (from Ch. 38, par. 11-21)

7 Sec. 11-21. Harmful material.

8 (a) Elements of ~~of~~ the Offense.

9 A person who, with knowledge that a person is a child, that  
10 is a person under 18 years of age, or who fails to exercise  
11 reasonable care in ascertaining the true age of a child,  
12 knowingly distributes to or sends or causes to be sent to, or  
13 exhibits to, or offers to distribute or exhibit any harmful  
14 material to a child, is guilty of a misdemeanor.

15 (b) Definitions.

16 (1) Material is harmful if, to the average person, applying  
17 contemporary standards, its predominant appeal, taken as a  
18 whole, is to prurient interest, that is a shameful or morbid  
19 interest in nudity, sex, or excretion, which goes substantially  
20 beyond customary limits of candor in description or  
21 representation of such matters, and is material the redeeming  
22 social importance of which is substantially less than its  
23 prurient appeal.

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

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

28 (4) Knowingly, as used in this section means having  
29 knowledge of the contents of the subject matter, or recklessly  
30 failing to exercise reasonable inspection which would have  
31 disclosed the contents thereof.

32 (c) Interpretation of Evidence.

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

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

18           (d) Sentence.

19           Distribution of harmful material in violation of this  
20 Section is a Class A misdemeanor. A second or subsequent  
21 offense is a Class 4 felony.

22           (e) Affirmative Defenses.

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

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

33           (3) Proof that the defendant demanded, was shown and acted  
34 in reliance upon any of the following documents as proof of the  
35 age of a child, shall be a defense to any criminal prosecution  
36 under this section: A document issued by the federal government

1 or any state, county or municipal government or subdivision or  
2 agency thereof, including, but not limited to, a motor vehicle  
3 operator's license, a registration certificate issued under  
4 the Federal Selective Service Act or an identification card  
5 issued to a member of the armed forces.

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

26 (f) Child Falsifying Age.

27 Any person under 18 years of age who falsely states, either  
28 orally or in writing, that he is not under the age of 18 years,  
29 or who presents or offers to any person any evidence of age and  
30 identity which is false or not actually his own for the purpose  
31 of ordering, obtaining, viewing, or otherwise procuring or  
32 attempting to procure or view any harmful material, is guilty  
33 of a Class B misdemeanor.

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