



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
HB1173

Introduced 2/8/2005, by Rep. John A. Fritchey

SYNOPSIS AS INTRODUCED:

720 ILCS 5/11-20.1

from Ch. 38, par. 11-20.1

Amends the Criminal Code of 1961. Provides that a person also commits child pornography by filming, videotaping, photographing, or otherwise depicting or portraying by means of any similar visual medium or reproduction or depicting by computer a child whom he or she knows or reasonably should know to be under 18 years of age or any severely or profoundly mentally retarded person where such child or severely or profoundly mentally retarded person is depicted or portrayed in any pose, posture or setting involving a lewd exhibition of the transparently clothed genitals, pubic area, buttocks, or, if such person is female, a fully or partially developed breast of the child or severely or profoundly mentally retarded person. Effective immediately.

LRB094 05102 RLC 35141 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

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 11-20.1 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 the offense of 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 knows or reasonably should know to be under the age of 18
13 or any severely or profoundly mentally retarded person
14 where such child or severely or profoundly mentally
15 retarded person is:

16 (i) actually or by simulation engaged in any act of
17 sexual penetration or sexual conduct with any person or
18 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 severely or profoundly
22 mentally retarded person and the mouth, anus, or sex
23 organs of another person or animal; or which involves
24 the mouth, anus or sex organs of the child or severely
25 or profoundly mentally retarded person and the sex
26 organs of another person or animal; or

27 (iii) actually or by simulation engaged in any act
28 of masturbation; or

29 (iv) actually or by simulation portrayed as being
30 the object of, or otherwise engaged in, any act of lewd
31 fondling, touching, or caressing involving another
32 person or animal; or

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

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

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

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

22 (3) with knowledge of the subject matter or theme
23 thereof, produces any stage play, live performance, film,
24 videotape or other similar visual portrayal or depiction by
25 computer which includes a child whom the person knows or
26 reasonably should know to be under the age of 18 or a
27 severely or profoundly mentally retarded person engaged in
28 any activity described in subparagraphs (i) through (vii)
29 of paragraph (1) of this subsection; or

30 (4) solicits, uses, persuades, induces, entices, or
31 coerces any child whom he knows or reasonably should know
32 to be under the age of 18 or a severely or profoundly
33 mentally retarded person to appear in any stage play, live
34 presentation, film, videotape, photograph or other similar
35 visual reproduction or depiction by computer in which the
36 child or severely or profoundly mentally retarded person is

1 or will be depicted, actually or by simulation, in any act,
2 pose or setting described in subparagraphs (i) through
3 (vii) of paragraph (1) of this subsection; or

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

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

23 (7) solicits, uses, persuades, induces, entices, or
24 coerces a person to provide a child under the age of 18 or
25 a severely or profoundly mentally retarded person to appear
26 in any videotape, photograph, film, stage play, live
27 presentation, or other similar visual reproduction or
28 depiction by computer in which the child or severely or
29 profoundly mentally retarded person will be depicted,
30 actually or by simulation, in any act, pose, or setting
31 described in subparagraphs (i) through (vii) of paragraph
32 (1) of this subsection.

33 (b) (1) It shall be an affirmative defense to a charge of
34 child pornography that the defendant reasonably believed,
35 under all of the circumstances, that the child was 18 years
36 of age or older or that the person was not a severely or

1 profoundly mentally retarded person but only where, prior
2 to the act or acts giving rise to a prosecution under this
3 Section, he took some affirmative action or made a bonafide
4 inquiry designed to ascertain whether the child was 18
5 years of age or older or that the person was not a severely
6 or profoundly mentally retarded person and his reliance
7 upon the information so obtained was clearly reasonable.

8 (2) (Blank).

9 (3) The charge of child pornography shall not apply to
10 the performance of official duties by law enforcement or
11 prosecuting officers, court personnel or attorneys, nor to
12 bonafide treatment or professional education programs
13 conducted by licensed physicians, psychologists or social
14 workers.

15 (4) Possession by the defendant of more than one of the
16 same film, videotape or visual reproduction or depiction by
17 computer in which child pornography is depicted shall raise
18 a rebuttable presumption that the defendant possessed such
19 materials with the intent to disseminate them.

20 (5) The charge of child pornography does not apply to a
21 person who does not voluntarily possess a film, videotape,
22 or visual reproduction or depiction by computer in which
23 child pornography is depicted. Possession is voluntary if
24 the defendant knowingly procures or receives a film,
25 videotape, or visual reproduction or depiction for a
26 sufficient time to be able to terminate his or her
27 possession.

28 (c) Violation of paragraph (1), (4), (5), or (7) of
29 subsection (a) is a Class 1 felony with a mandatory minimum
30 fine of \$2,000 and a maximum fine of \$100,000. Violation of
31 paragraph (3) of subsection (a) is a Class 1 felony with a
32 mandatory minimum fine of \$1500 and a maximum fine of \$100,000.
33 Violation of paragraph (2) of subsection (a) is a Class 1
34 felony with a mandatory minimum fine of \$1000 and a maximum
35 fine of \$100,000. Violation of paragraph (6) of subsection (a)
36 is a Class 3 felony with a mandatory minimum fine of \$1000 and

1 a maximum fine of \$100,000.

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

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

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

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

31 (1) "Disseminate" means (i) to sell, distribute,
32 exchange or transfer possession, whether with or without
33 consideration or (ii) to make a depiction by computer
34 available for distribution or downloading through the
35 facilities of any telecommunications network or through
36 any other means of transferring computer programs or data

1 to a computer.

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

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

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

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

16 (6) "Computer", "computer program", and "data" have
17 the meanings ascribed to them in Section 16D-2 of this
18 Code.

19 (7) "Child" includes a film, videotape, photograph, or
20 other similar visual medium or reproduction or depiction by
21 computer that is, or appears to be, that of a person,
22 either in part, or in total, under the age of 18,
23 regardless of the method by which the film, videotape,
24 photograph, or other similar visual medium or reproduction
25 or depiction by computer is created, adopted, or modified
26 to appear as such. "Child" also includes a film, videotape,
27 photograph, or other similar visual medium or reproduction
28 or depiction by computer that is advertised, promoted,
29 presented, described, or distributed in such a manner that
30 conveys the impression that the film, videotape,
31 photograph, or other similar visual medium or reproduction
32 or depiction by computer is of a person under the age of
33 18.

34 (8) "Sexual penetration" and "sexual conduct" have the
35 meanings ascribed to them in Section 12-12 of this Code.

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

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

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

7 (ii) In addition, Public Act 88-680 was entitled
8 "AN ACT to create a Safe Neighborhoods Law". (A)
9 Article 5 was entitled JUVENILE JUSTICE and amended the
10 Juvenile Court Act of 1987. (B) Article 15 was entitled
11 GANGS and amended various provisions of the Criminal
12 Code of 1961 and the Unified Code of Corrections. (C)
13 Article 20 was entitled ALCOHOL ABUSE and amended
14 various provisions of the Illinois Vehicle Code. (D)
15 Article 25 was entitled DRUG ABUSE and amended the
16 Cannabis Control Act and the Illinois Controlled
17 Substances Act. (E) Article 30 was entitled FIREARMS
18 and amended the Criminal Code of 1961 and the Code of
19 Criminal Procedure of 1963. (F) Article 35 amended the
20 Criminal Code of 1961, the Rights of Crime Victims and
21 Witnesses Act, and the Unified Code of Corrections. (G)
22 Article 40 amended the Criminal Code of 1961 to
23 increase the penalty for compelling organization
24 membership of persons. (H) Article 45 created the
25 Secure Residential Youth Care Facility Licensing Act
26 and amended the State Finance Act, the Juvenile Court
27 Act of 1987, the Unified Code of Corrections, and the
28 Private Correctional Facility Moratorium Act. (I)
29 Article 50 amended the WIC Vendor Management Act, the
30 Firearm Owners Identification Card Act, the Juvenile
31 Court Act of 1987, the Criminal Code of 1961, the
32 Wrongs to Children Act, and the Unified Code of
33 Corrections.

34 (iii) On September 22, 1998, the Third District
35 Appellate Court in *People v. Dainty*, 701 N.E. 2d 118,
36 ruled that Public Act 88-680 violates the single

1 subject clause of the Illinois Constitution (Article
2 IV, Section 8 (d)) and was unconstitutional in its
3 entirety. As of the time this amendatory Act of 1999
4 was prepared, People v. Dainty was still subject to
5 appeal.

6 (iv) Child pornography is a vital concern to the
7 people of this State and the validity of future
8 prosecutions under the child pornography statute of
9 the Criminal Code of 1961 is in grave doubt.

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

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

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

33 (Source: P.A. 91-54, eff. 6-30-99; 91-229, eff. 1-1-00; 91-357,
34 eff. 7-29-99; 92-16, eff. 6-28-01; 92-434, eff. 1-1-02; 92-827,
35 eff. 8-22-02.)

1 Section 99. Effective date. This Act takes effect upon
2 becoming law.