



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB3571

Introduced 2/24/2005, 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. Deletes provisions concerning the distribution and exhibition of harmful material to minors and replaces it with the following provisions: (i) provides that a person is guilty of distributing harmful material to a minor when he or she knowingly sells, lends, distributes, or gives away certain material knowing that the minor is a person under the age of 18 or failing to exercise reasonable care in ascertaining the person's true age, or he or she admits a minor to premises where there is exhibited or to be exhibited such harmful material, (ii) provides that distribution of harmful material to a minor is a Class A misdemeanor, and (iii) establishes several affirmative defenses. Makes other changes.

LRB094 09286 RXD 39524 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 11-21 as follows:

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

8 (a) As used in this Section:

9 "Distribute" means transfer possession of, whether
10 with or without consideration.

11 "Harmful to minors" means that quality of any
12 description or representation, in whatever form, of
13 nudity, sexual conduct, sexual excitement, or
14 sado-masochistic abuse, when, taken as a whole, it (i)
15 predominately appeals to the prurient interest in sex of
16 minors, (ii) is patently offensive to prevailing standards
17 in the adult community in the State as a whole with respect
18 to what is suitable material for minors, and (iii) lacks
19 serious literary, artistic, political, or scientific value
20 for minors.

21 "Knowingly" means having knowledge of the contents of
22 the subject matter, or recklessly failing to exercise
23 reasonable inspection which would have disclosed the
24 contents.

25 "Material" means (i) any picture, photograph, drawing,
26 sculpture, film, video game, computer game, video or
27 similar visual depiction, including any such
28 representation or image which is stored electronically, or
29 (ii) any book, magazine, printed matter however
30 reproduced, or recorded audio of any sort.

31 "Minor" means any person under the age of 18.

32 "Nudity" means the showing of the human male or female

1 genitals, pubic area or buttocks with less than a full
2 opaque covering, or the showing of the female breast with
3 less than a fully opaque covering of any portion below the
4 top of the nipple, or the depiction of covered male
5 genitals in a discernably turgid state.

6 "Sado-masochistic abuse" means flagellation or torture
7 by or upon a person clad in undergarments, a mask or
8 bizarre costume, or the condition of being fettered, bound
9 or otherwise physically restrained on the part of one
10 clothed for sexual gratification or stimulation.

11 "Sexual conduct" means acts of masturbation, sexual
12 intercourse, or physical contact with a person's clothed or
13 unclothed genitals, pubic area, buttocks or, if such person
14 be a female, breast.

15 "Sexual excitement" means the condition of human male
16 or female genitals when in a state of sexual stimulation or
17 arousal.

18 (b) A person is guilty of distributing harmful material to
19 a minor when he or she:

20 (1) knowingly sells, lends, distributes, or gives away
21 to a minor, knowing that the minor is under the age of 18
22 or failing to exercise reasonable care in ascertaining the
23 person's true age:

24 (A) any material which depicts nudity, sexual
25 conduct or sado-masochistic abuse, or which contains
26 explicit and detailed verbal descriptions or narrative
27 accounts of sexual excitement, sexual conduct or
28 sado-masochistic abuse, and which taken as a whole is
29 harmful to minors;

30 (B) a motion picture, show, or other presentation
31 which depicts nudity, sexual conduct or
32 sado-masochistic abuse and is harmful to minors; or

33 (C) an admission ticket or pass to premises where
34 there is exhibited or to be exhibited such a motion
35 picture, show, or other presentation; or

36 (2) admits a minor to premises where there is exhibited

1 or to be exhibited such a motion picture, show, or other
2 presentation, knowing that the minor is a person under the
3 age of 18 or failing to exercise reasonable care in
4 ascertaining the person's true age.

5 (c) In any prosecution arising under this Section, it is an
6 affirmative defense:

7 (1) that the minor as to whom the offense is alleged to
8 have been committed exhibited to the accused a draft card,
9 driver's license, birth certificate or other official or
10 apparently official document purporting to establish that
11 the minor was 18 years of age or older, which was relied
12 upon by the accused;

13 (2) that the defendant was in a parental or
14 guardianship relationship with the minor or that the minor
15 was accompanied by a parent or legal guardian;

16 (3) that the defendant was a bona fide school, museum,
17 or public library, or was a person acting in the course of
18 his or her employment as an employee or official of such
19 organization or retail outlet affiliated with and serving
20 the educational purpose of such organization;

21 (4) that the act charged was committed in aid of
22 legitimate scientific or educational purposes; or

23 (5) that an advertisement of harmful material as
24 defined in this Section culminated in the sale or
25 distribution of such harmful material to a child under
26 circumstances where there was no personal confrontation of
27 the child by the defendant, his employees, or agents, as
28 where the order or request for such harmful material was
29 transmitted by mail, telephone, Internet or similar means
30 of communication, and delivery of such harmful material to
31 the child was by mail, freight, Internet or similar means
32 of transport, which advertisement contained the following
33 statement, or a substantially similar statement, and that
34 the defendant required the purchaser to certify that he or
35 she was not under the age of 18 and that the purchaser
36 falsely stated that he or she was not under the age of 18:

1 "NOTICE: It is unlawful for any person under the age of 18
2 to purchase the matter advertised. Any person under the age
3 of 18 that falsely states that he or she is not under the
4 age of 18 for the purpose of obtaining the material
5 advertised is guilty of a Class B misdemeanor under the
6 laws of the State."

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

16 (e) Distribution of harmful material in violation of this
17 Section is a Class A misdemeanor. A second or subsequent
18 offense is a Class 4 felony.

19 (f) Any person under the age of 18 that falsely states,
20 either orally or in writing, that he or she is not under the
21 age of 18, or that presents or offers to any person any
22 evidence of age and identity that is false or not actually his
23 or her own for the purpose of ordering, obtaining, viewing, or
24 otherwise procuring or attempting to procure or view any
25 harmful material is guilty of a Class B misdemeanor.

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

27 ~~A person who, with knowledge that a person is a child, that~~
28 ~~is a person under 18 years of age, or who fails to exercise~~
29 ~~reasonable care in ascertaining the true age of a child,~~
30 ~~knowingly distributes to or sends or causes to be sent to, or~~
31 ~~exhibits to, or offers to distribute or exhibit any harmful~~
32 ~~material to a child, is guilty of a misdemeanor.~~

33 ~~(b) Definitions.~~

34 ~~(1) Material is harmful if, to the average person, applying~~
35 ~~contemporary standards, its predominant appeal, taken as a~~
36 ~~whole, is to prurient interest, that is a shameful or morbid~~

1 ~~interest in nudity, sex, or excretion, which goes substantially~~
2 ~~beyond customary limits of candor in description or~~
3 ~~representation of such matters, and is material the redeeming~~
4 ~~social importance of which is substantially less than its~~
5 ~~prurient appeal.~~

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

8 ~~(3) Distribute means to transfer possession of, whether~~
9 ~~with or without consideration.~~

10 ~~(4) Knowingly, as used in this section means having~~
11 ~~knowledge of the contents of the subject matter, or recklessly~~
12 ~~failing to exercise reasonable inspection which would have~~
13 ~~disclosed the contents thereof.~~

14 ~~(c) Interpretation of Evidence.~~

15 ~~The predominant appeal to prurient interest of the material~~
16 ~~shall be judged with reference to average children of the same~~
17 ~~general age of the child to whom such material was offered,~~
18 ~~distributed, sent or exhibited, unless it appears from the~~
19 ~~nature of the matter or the circumstances of its dissemination,~~
20 ~~distribution or exhibition that it is designed for specially~~
21 ~~susceptible groups, in which case the predominant appeal of the~~
22 ~~material shall be judged with reference to its intended or~~
23 ~~probable recipient group.~~

24 ~~In prosecutions under this section, where circumstances of~~
25 ~~production, presentation, sale, dissemination, distribution,~~
26 ~~or publicity indicate the material is being commercially~~
27 ~~exploited for the sake of its prurient appeal, such evidence is~~
28 ~~probative with respect to the nature of the material and can~~
29 ~~justify the conclusion that the redeeming social importance of~~
30 ~~the material is in fact substantially less than its prurient~~
31 ~~appeal.~~

32 ~~(d) Sentence.~~

33 ~~Distribution of harmful material in violation of this~~
34 ~~Section is a Class A misdemeanor. A second or subsequent~~
35 ~~offense is a Class 4 felony.~~

36 ~~(e) Affirmative Defenses.~~

1 ~~(1) Nothing in this section shall prohibit any public~~
2 ~~library or any library operated by an accredited institution of~~
3 ~~higher education from circulating harmful material to any~~
4 ~~person under 18 years of age, provided such circulation is in~~
5 ~~aid of a legitimate scientific or educational purpose, and it~~
6 ~~shall be an affirmative defense in any prosecution for a~~
7 ~~violation of this section that the act charged was committed in~~
8 ~~aid of legitimate scientific or educational purposes.~~

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

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

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

1 ~~states that he is not under 18 years of age for the purpose of~~
2 ~~obtaining the material advertised herein, is guilty of a Class~~
3 ~~B misdemeanor under the laws of the State of Illinois."~~

4 ~~(f) Child Falsifying Age.~~

5 ~~Any person under 18 years of age who falsely states, either~~
6 ~~orally or in writing, that he is not under the age of 18 years,~~
7 ~~or who presents or offers to any person any evidence of age and~~
8 ~~identity which is false or not actually his own for the purpose~~
9 ~~of ordering, obtaining, viewing, or otherwise procuring or~~
10 ~~attempting to procure or view any harmful material, is guilty~~
11 ~~of a Class B misdemeanor.~~

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