

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 and by adding Articles 12A and 12B 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 ~~dislosed 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 ~~suseceptible 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.)

13 (720 ILCS 5/Art. 12A heading new)

14 ARTICLE 12A. VIOLENT VIDEO GAMES

15 (720 ILCS 5/12A-1 new)

16 Sec. 12A-1. Short title. This Article may be cited as the  
17 Violent Video Games Law.

18 (720 ILCS 5/12A-5 new)

19 Sec. 12A-5. Findings.

20 (a) The General Assembly finds that minors who play violent  
21 video games are more likely to:

22 (1) Exhibit violent, asocial, or aggressive behavior.

23 (2) Experience feelings of aggression.

24 (3) Experience a reduction of activity in the frontal  
25 lobes of the brain which is responsible for controlling  
26 behavior.

27 (b) While the video game industry has adopted its own  
28 voluntary standards describing which games are appropriate for  
29 minors, those standards are not adequately enforced.

30 (c) Minors are capable of purchasing and do purchase  
31 violent video games.

32 (d) The State has a compelling interest in assisting  
33 parents in protecting their minor children from violent video

1 games.

2 (e) The State has a compelling interest in preventing  
3 violent, aggressive, and asocial behavior.

4 (f) The State has a compelling interest in preventing  
5 psychological harm to minors who play violent video games.

6 (g) The State has a compelling interest in eliminating any  
7 societal factors that may inhibit the physiological and  
8 neurological development of its youth.

9 (h) The State has a compelling interest in facilitating the  
10 maturation of Illinois' children into law-abiding, productive  
11 adults.

12 (720 ILCS 5/12A-10 new)

13 Sec. 12A-10. Definitions. For the purposes of this Article,  
14 the following terms have the following meanings:

15 (a) "Video game retailer" means a person who sells or rents  
16 video games to the public.

17 (b) "Video game" means an object or device that stores  
18 recorded data or instructions, receives data or instructions  
19 generated by a person who uses it, and, by processing the data  
20 or instructions, creates an interactive game capable of being  
21 played, viewed, or experienced on or through a computer, gaming  
22 system, console, or other technology.

23 (c) "Minor" means a person under 18 years of age.

24 (d) "Person" includes but is not limited to an individual,  
25 corporation, partnership, and association.

26 (e) "Violent" video games include depictions of or  
27 simulations of human-on-human violence in which the player  
28 kills or otherwise causes serious physical harm to another  
29 human. "Serious physical harm" includes depictions of death,  
30 dismemberment, amputation, decapitation, maiming,  
31 disfigurement, mutilation of body parts, or rape.

32 (720 ILCS 5/12A-15 new)

33 Sec. 12A-15. Restricted sale or rental of violent video  
34 games.



1       (a) A person who sells, rents, or permits to be sold or  
2 rented, any violent video game to any minor, commits a petty  
3 offense for which a fine of \$1,000 may be imposed.

4       (b) A person who sells, rents, or permits to be sold or  
5 rented any violent video game via electronic scanner must  
6 program the electronic scanner to prompt sales clerks to check  
7 identification before the sale or rental transaction is  
8 completed. A person who violates this subsection (b) commits a  
9 petty offense for which a fine of \$1,000 may be imposed.

10       (c) A person may not sell or rent, or permit to be sold or  
11 rented, any violent video game through a self-scanning checkout  
12 mechanism. A person who violates this subsection (c) commits a  
13 petty offense for which a fine of \$1,000 may be imposed.

14       (d) A retail sales clerk shall not be found in violation of  
15 this Section unless he or she has complete knowledge that the  
16 party to whom he or she sold or rented a violent video game was  
17 a minor and the clerk sold or rented the video game to the  
18 minor with the specific intent to do so.

19       (720 ILCS 5/12A-20 new)

20       Sec. 12A-20. Affirmative defenses. In any prosecution  
21 arising under this Article, it is an affirmative defense:

22       (1) that the defendant was a family member of the minor for  
23 whom the video game was purchased. "Family member" for the  
24 purpose of this Section, includes a parent, sibling,  
25 grandparent, aunt, uncle, or first cousin;

26       (2) that the minor who purchased the video game exhibited a  
27 draft card, driver's license, birth certificate or other  
28 official or apparently official document purporting to  
29 establish that the minor was 18 years of age or older, which  
30 the defendant reasonably relied on and reasonably believed to  
31 be authentic;

32       (3) for the video game retailer, if the retail sales clerk  
33 had complete knowledge that the party to whom he or she sold or  
34 rented a violent video game was a minor and the clerk sold or  
35 rented the video game to the minor with the specific intent to

1 do so; or

2 (4) that the video game sold or rented was pre-packaged and  
3 rated EC, E10+, E, or T by the Entertainment Software Ratings  
4 Board.

5 (720 ILCS 5/12A-25 new)

6 Sec. 12A-25. Labeling of violent video games.

7 (a) Video game retailers shall label all violent video  
8 games as defined in this Article, with a solid white "18"  
9 outlined in black. The "18" shall have dimensions of no less  
10 than 2 inches by 2 inches. The "18" shall be displayed on the  
11 front face of the video game package.

12 (b) A retailer's failure to comply with this Section is a  
13 petty offense punishable by a fine of \$500 for the first 3  
14 violations, and \$1,000 for every subsequent violation.

15 (720 ILCS 5/Art. 12B heading new)

16 ARTICLE 12B. SEXUALLY EXPLICIT VIDEO GAMES

17 (720 ILCS 5/12B-1 new)

18 Sec. 12B-1. Short title. This Article may be cited as the  
19 Sexually Explicit Video Games Law.

20 (720 ILCS 5/12B-5 new)

21 Sec. 12B-5. Findings. The General Assembly finds sexually  
22 explicit video games inappropriate for minors and that the  
23 State has a compelling interest in assisting parents in  
24 protecting their minor children from sexually explicit video  
25 games.

26 (720 ILCS 5/12B-10 new)

27 Sec. 12B-10. Definitions. For the purposes of this Article,  
28 the following terms have the following meanings:

29 (a) "Video game retailer" means a person who sells or rents  
30 video games to the public.

31 (b) "Video game" means an object or device that stores

1 recorded data or instructions, receives data or instructions  
2 generated by a person who uses it, and, by processing the data  
3 or instructions, creates an interactive game capable of being  
4 played, viewed, or experienced on or through a computer, gaming  
5 system, console, or other technology.

6 (c) "Minor" means a person under 18 years of age.

7 (d) "Person" includes but is not limited to an individual,  
8 corporation, partnership, and association.

9 (e) "Sexually explicit" video games include those that the  
10 average person, applying contemporary community standards  
11 would find, with respect to minors, is designed to appeal or  
12 pander to the prurient interest and depict or represent in a  
13 manner patently offensive with respect to minors, an actual or  
14 simulated sexual act or sexual contact, an actual or simulated  
15 normal or perverted sexual act or a lewd exhibition of the  
16 genitals or post-pubescent female breast.

17 (720 ILCS 5/12B-15 new)

18 Sec. 12B-15. Restricted sale or rental of sexually explicit  
19 video games.

20 (a) A person who sells, rents, or permits to be sold or  
21 rented, any sexually explicit video game to any minor, commits  
22 a petty offense for which a fine of \$1,000 may be imposed.

23 (b) A person who sells, rents, or permits to be sold or  
24 rented any sexually explicit video game via electronic scanner  
25 must program the electronic scanner to prompt sales clerks to  
26 check identification before the sale or rental transaction is  
27 completed. A person who violates this subsection (b) commits a  
28 petty offense for which a fine of \$1,000 may be imposed.

29 (c) A person may not sell or rent, or permit to be sold or  
30 rented, any sexually explicit video game through a  
31 self-scanning checkout mechanism. A person who violates this  
32 subsection (c) commits a petty offense for which a fine of  
33 \$1,000 may be imposed.

34 (d) A retail sales clerk shall not be found in violation of  
35 this Section unless he or she has complete knowledge that the

1 party to whom he or she sold or rented a sexually explicit  
2 video game was a minor and the clerk sold or rented the video  
3 game to the minor with the specific intent to do so.

4 (720 ILCS 5/12B-20 new)

5 Sec. 12B-20. Affirmative defenses. In any prosecution  
6 arising under this Article, it is an affirmative defense:

7 (1) that the defendant was a family member of the minor for  
8 whom the video game was purchased. "Family member" for the  
9 purpose of this Section, includes a parent, sibling,  
10 grandparent, aunt, uncle, or first cousin;

11 (2) that the minor who purchased the video game exhibited a  
12 draft card, driver's license, birth certificate or other  
13 official or apparently official document purporting to  
14 establish that the minor was 18 years of age or older, which  
15 the defendant reasonably relied on and reasonably believed to  
16 be authentic;

17 (3) for the video game retailer, if the retail sales clerk  
18 had complete knowledge that the party to whom he or she sold or  
19 rented a violent video game was a minor and the clerk sold or  
20 rented the video game to the minor with the specific intent to  
21 do so; or

22 (4) that the video game sold or rented was pre-packaged and  
23 rated EC, E10+, E, or T by the Entertainment Software Ratings  
24 Board.

25 (720 ILCS 5/12B-25 new)

26 Sec. 12B-25. Labeling of sexually explicit video games.

27 (a) Video game retailers shall label all sexually explicit  
28 video games as defined in this Act, with a solid white "18"  
29 outlined in black. The "18" shall have dimensions of no less  
30 than 2 inches by 2 inches. The "18" shall be displayed on the  
31 front face of the video game package.

32 (b) A retailer who fails to comply with this Section is  
33 quilty of a petty offense punishable by a fine of \$500 for the  
34 first 3 violations, and \$1,000 for every subsequent violation.

1 (720 ILCS 5/12B-30 new)

2 Sec. 12B-30. Posting notification of video games rating  
3 system.

4 (a) A retailer who sells or rents video games shall post a  
5 sign that notifies customers that a video game rating system,  
6 created by the Entertainment Software Ratings Board, is  
7 available to aid in the selection of a game. The sign shall be  
8 prominently posted in, or within 5 feet of, the area in which  
9 games are displayed for sale or rental, at the information desk  
10 if one exists, and at the point of purchase.

11 (b) The lettering of each sign shall be printed, at a  
12 minimum, in 36-point type and shall be in black ink against a  
13 light colored background, with dimensions of no less than 18 by  
14 24 inches.

15 (c) A retailer's failure to comply with this Section is a  
16 petty offense punishable by a fine of \$500 for the first 3  
17 violations, and \$1,000 for every subsequent violation.

18 (720 ILCS 5/12B-35 new)

19 Sec. 12B-35. Availability of brochure describing rating  
20 system.

21 (a) A video game retailer shall make available upon request  
22 a brochure to customers that explains the Entertainment  
23 Software Ratings Board ratings system.

24 (b) A retailer who fails to comply with this Section shall  
25 receive the punishment described in subsection (b) of Section  
26 12B-25.

27 Section 98. Severability. If any provision of this Act or  
28 the application thereof to any person or circumstance is held  
29 invalid, the remainder of this Act and the application of such  
30 provision to other persons or circumstances shall not be  
31 affected thereby.

32 Section 99. Effective Date. This Act takes effect January

1 1, 2006.