



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
HB5817

Introduced 8/3/2006, by Rep. Ed Sullivan, Jr.

SYNOPSIS AS INTRODUCED:

720 ILCS 5/11-20.1

from Ch. 38, par. 11-20.1

Amends the Criminal Code of 1961. Provides that possession by a defendant of 100 or more items of child pornography is prima facie evidence that the defendant possessed those items with the intent to disseminate them.

LRB094 21160 DRJ 59491 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 or persons employed by law
12 enforcement or prosecuting agencies, court personnel or
13 attorneys, nor to bonafide treatment or professional
14 education programs conducted by licensed physicians,
15 psychologists or social workers.

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

21 (4.5) Possession by the defendant of 100 or more items
22 depicting any child or severely or profoundly mentally
23 retarded person whom the person knows or reasonably should
24 know to be under the age of 18 or to be a severely or
25 profoundly mentally retarded person engaged in any
26 activity described in subparagraphs (i) through (vii) of
27 paragraph (1) of subsection (a) is prima facie evidence
28 that the defendant possessed those items with the intent to
29 disseminate those items.

30 (5) The charge of child pornography does not apply to a
31 person who does not voluntarily possess a film, videotape,
32 or visual reproduction or depiction by computer in which
33 child pornography is depicted. Possession is voluntary if
34 the defendant knowingly procures or receives a film,
35 videotape, or visual reproduction or depiction for a
36 sufficient time to be able to terminate his or her

1 possession.

2 (c) Violation of paragraph (1), (4), (5), or (7) of
3 subsection (a) is a Class 1 felony with a mandatory minimum
4 fine of \$2,000 and a maximum fine of \$100,000. Violation of
5 paragraph (3) of subsection (a) is a Class 1 felony with a
6 mandatory minimum fine of \$1500 and a maximum fine of \$100,000.
7 Violation of paragraph (2) of subsection (a) is a Class 1
8 felony with a mandatory minimum fine of \$1000 and a maximum
9 fine of \$100,000. Violation of paragraph (6) of subsection (a)
10 is a Class 3 felony with a mandatory minimum fine of \$1000 and
11 a maximum fine of \$100,000.

12 (d) If a person is convicted of a second or subsequent
13 violation of this Section within 10 years of a prior
14 conviction, the court shall order a presentence psychiatric
15 examination of the person. The examiner shall report to the
16 court whether treatment of the person is necessary.

17 (e) Any film, videotape, photograph or other similar visual
18 reproduction or depiction by computer which includes a child
19 under the age of 18 or a severely or profoundly mentally
20 retarded person engaged in any activity described in
21 subparagraphs (i) through (vii) or paragraph 1 of subsection
22 (a), and any material or equipment used or intended for use in
23 photographing, filming, printing, producing, reproducing,
24 manufacturing, projecting, exhibiting, depiction by computer,
25 or disseminating such material shall be seized and forfeited in
26 the manner, method and procedure provided by Section 36-1 of
27 this Code for the seizure and forfeiture of vessels, vehicles
28 and aircraft.

29 (e-5) Upon the conclusion of a case brought under this
30 Section, the court shall seal all evidence depicting a victim
31 or witness that is sexually explicit. The evidence may be
32 unsealed and viewed, on a motion of the party seeking to unseal
33 and view the evidence, only for good cause shown and in the
34 discretion of the court. The motion must expressly set forth
35 the purpose for viewing the material. The State's attorney and
36 the victim, if possible, shall be provided reasonable notice of

1 the hearing on the motion to unseal the evidence. Any person
2 entitled to notice of a hearing under this subsection (e-5) may
3 object to the motion.

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

5 (1) "Disseminate" means (i) to sell, distribute,
6 exchange or transfer possession, whether with or without
7 consideration or (ii) to make a depiction by computer
8 available for distribution or downloading through the
9 facilities of any telecommunications network or through
10 any other means of transferring computer programs or data
11 to a computer.

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

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

15 (4) "Depict by computer" means to generate or create,
16 or cause to be created or generated, a computer program or
17 data that, after being processed by a computer either alone
18 or in conjunction with one or more computer programs,
19 results in a visual depiction on a computer monitor,
20 screen, or display.

21 (5) "Depiction by computer" means a computer program or
22 data that, after being processed by a computer either alone
23 or in conjunction with one or more computer programs,
24 results in a visual depiction on a computer monitor,
25 screen, or display.

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

29 (7) "Child" includes a film, videotape, photograph, or
30 other similar visual medium or reproduction or depiction by
31 computer that is, or appears to be, that of a person,
32 either in part, or in total, under the age of 18,
33 regardless of the method by which the film, videotape,
34 photograph, or other similar visual medium or reproduction
35 or depiction by computer is created, adopted, or modified
36 to appear as such. "Child" also includes a film, videotape,

1 photograph, or other similar visual medium or reproduction
2 or depiction by computer that is advertised, promoted,
3 presented, described, or distributed in such a manner that
4 conveys the impression that the film, videotape,
5 photograph, or other similar visual medium or reproduction
6 or depiction by computer is of a person under the age of
7 18.

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

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

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

12 (i) Section 50-5 of Public Act 88-680, effective
13 January 1, 1995, contained provisions amending the
14 child pornography statute, Section 11-20.1 of the
15 Criminal Code of 1961. Section 50-5 also contained
16 other provisions.

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

1 Act of 1987, the Unified Code of Corrections, and the
2 Private Correctional Facility Moratorium Act. (I)
3 Article 50 amended the WIC Vendor Management Act, the
4 Firearm Owners Identification Card Act, the Juvenile
5 Court Act of 1987, the Criminal Code of 1961, the
6 Wrongs to Children Act, and the Unified Code of
7 Corrections.

8 (iii) On September 22, 1998, the Third District
9 Appellate Court in *People v. Dainty*, 701 N.E. 2d 118,
10 ruled that Public Act 88-680 violates the single
11 subject clause of the Illinois Constitution (Article
12 IV, Section 8 (d)) and was unconstitutional in its
13 entirety. As of the time this amendatory Act of 1999
14 was prepared, *People v. Dainty* was still subject to
15 appeal.

16 (iv) Child pornography is a vital concern to the
17 people of this State and the validity of future
18 prosecutions under the child pornography statute of
19 the Criminal Code of 1961 is in grave doubt.

20 (2) It is the purpose of this amendatory Act of 1999 to
21 prevent or minimize any problems relating to prosecutions
22 for child pornography that may result from challenges to
23 the constitutional validity of Public Act 88-680 by
24 re-enacting the Section relating to child pornography that
25 was included in Public Act 88-680.

26 (3) This amendatory Act of 1999 re-enacts Section
27 11-20.1 of the Criminal Code of 1961, as it has been
28 amended. This re-enactment is intended to remove any
29 question as to the validity or content of that Section; it
30 is not intended to supersede any other Public Act that
31 amends the text of the Section as set forth in this
32 amendatory Act of 1999. The material is shown as existing
33 text (i.e., without underscoring) because, as of the time
34 this amendatory Act of 1999 was prepared, *People v. Dainty*
35 was subject to appeal to the Illinois Supreme Court.

36 (4) The re-enactment by this amendatory Act of 1999 of

1 Section 11-20.1 of the Criminal Code of 1961 relating to
2 child pornography that was amended by Public Act 88-680 is
3 not intended, and shall not be construed, to imply that
4 Public Act 88-680 is invalid or to limit or impair any
5 legal argument concerning whether those provisions were
6 substantially re-enacted by other Public Acts.

7 (Source: P.A. 94-366, eff. 7-29-05.)