



Judiciary II - Criminal Law Committee

**Filed: 3/13/2008**

09500HB5687ham001

LRB095 19968 RLC 47948 a

1 AMENDMENT TO HOUSE BILL 5687

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 5687 on page 1, line  
3 1, by inserting after "law" the following:

4 ", which may be referred to as the Child Protection Act of  
5 2008"; and

6 on page 1, by replacing lines 5 and 6 with the following:

7 "Sections 11-9.4, 11-20.1, 11-21, and 11-20.4 and by adding  
8 Sections 10-8.1 and 11-6.6 as follows:"; and

9 on page 1, line 13, by inserting after "person" the following:

10 ", other than for a lawful purpose under Illinois law,"; and

11 on page 2, line 14, by inserting after "guardian" the  
12 following:

13 "and the meeting with the child is arranged for other than a  
14 lawful purpose under Illinois law"; and

1 by replacing lines 18 through 25 on page 12 and lines 1 through  
2 12 on page 13 with the following:

3 "(720 ILCS 5/11-20.1) (from Ch. 38, par. 11-20.1)

4 Sec. 11-20.1. Child pornography.

5 (a) A person commits the offense of child pornography who:

6 (1) films, videotapes, photographs, or otherwise  
7 depicts or portrays by means of any similar visual medium  
8 or reproduction or depicts by computer any child whom he  
9 knows or reasonably should know to be under the age of 18  
10 or any severely or profoundly mentally retarded person  
11 where such child or severely or profoundly mentally  
12 retarded person is:

13 (i) actually or by simulation engaged in any act of  
14 sexual penetration or sexual conduct with any person or  
15 animal; or

16 (ii) actually or by simulation engaged in any act  
17 of sexual penetration or sexual conduct involving the  
18 sex organs of the child or severely or profoundly  
19 mentally retarded person and the mouth, anus, or sex  
20 organs of another person or animal; or which involves  
21 the mouth, anus or sex organs of the child or severely  
22 or profoundly mentally retarded person and the sex  
23 organs of another person or animal; or

24 (iii) actually or by simulation engaged in any act  
25 of masturbation; or

1           (iv) actually or by simulation portrayed as being  
2           the object of, or otherwise engaged in, any act of lewd  
3           fondling, touching, or caressing involving another  
4           person or animal; or

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

7           (vi) actually or by simulation portrayed or  
8           depicted as bound, fettered, or subject to sadistic,  
9           masochistic, or sadomasochistic abuse in any sexual  
10          context; or

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

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

26          (3) with knowledge of the subject matter or theme

1           thereof, produces any stage play, live performance, film,  
2           videotape or other similar visual portrayal or depiction by  
3           computer which includes a child whom the person knows or  
4           reasonably should know to be under the age of 18 or a  
5           severely or profoundly mentally retarded person engaged in  
6           any activity described in subparagraphs (i) through (vii)  
7           of paragraph (1) of this subsection; or

8           (4) solicits, uses, persuades, induces, entices, or  
9           coerces any child whom he knows or reasonably should know  
10          to be under the age of 18 or a severely or profoundly  
11          mentally retarded person to appear in any stage play, live  
12          presentation, film, videotape, photograph or other similar  
13          visual reproduction or depiction by computer in which the  
14          child or severely or profoundly mentally retarded person is  
15          or will be depicted, actually or by simulation, in any act,  
16          pose or setting described in subparagraphs (i) through  
17          (vii) of paragraph (1) of this subsection; or

18          (5) is a parent, step-parent, legal guardian or other  
19          person having care or custody of a child whom the person  
20          knows or reasonably should know to be under the age of 18  
21          or a severely or profoundly mentally retarded person and  
22          who knowingly permits, induces, promotes, or arranges for  
23          such child or severely or profoundly mentally retarded  
24          person to appear in any stage play, live performance, film,  
25          videotape, photograph or other similar visual  
26          presentation, portrayal or simulation or depiction by

1 computer of any act or activity described in subparagraphs  
2 (i) through (vii) of paragraph (1) of this subsection; or

3 (6) with knowledge of the nature or content thereof,  
4 possesses any film, videotape, photograph or other similar  
5 visual reproduction or depiction by computer of any child  
6 or severely or profoundly mentally retarded person whom the  
7 person knows or reasonably should know to be under the age  
8 of 18 or to be a severely or profoundly mentally retarded  
9 person, engaged in any activity described in subparagraphs  
10 (i) through (vii) of paragraph (1) of this subsection; or

11 (7) solicits, uses, persuades, induces, entices, or  
12 coerces a person to provide a child under the age of 18 or  
13 a severely or profoundly mentally retarded person to appear  
14 in any videotape, photograph, film, stage play, live  
15 presentation, or other similar visual reproduction or  
16 depiction by computer in which the child or severely or  
17 profoundly mentally retarded person will be depicted,  
18 actually or by simulation, in any act, pose, or setting  
19 described in subparagraphs (i) through (vii) of paragraph  
20 (1) of this subsection; or -

21 (8) is 18 years of age or over and knowingly  
22 manufactures without the knowledge and consent of the  
23 child's parent or guardian a photograph, videotape, or  
24 digital image of a child under 17 years of age in which the  
25 focus or concentration of the photograph, videotape, or  
26 digital image is the child's clothed genitals, the child's

1       pubic area, the child's buttocks area or, if the child is  
2       female, the breast exposed through transparent clothing.

3       (b) (1) It shall be an affirmative defense to a charge of  
4       child pornography that the defendant reasonably believed,  
5       under all of the circumstances, that the child was 18 years  
6       of age or older or that the person was not a severely or  
7       profoundly mentally retarded person but only where, prior  
8       to the act or acts giving rise to a prosecution under this  
9       Section, he took some affirmative action or made a bonafide  
10      inquiry designed to ascertain whether the child was 18  
11      years of age or older or that the person was not a severely  
12      or profoundly mentally retarded person and his reliance  
13      upon the information so obtained was clearly reasonable.

14      (2) (Blank).

15      (3) The charge of child pornography shall not apply to  
16      the performance of official duties by law enforcement or  
17      prosecuting officers or persons employed by law  
18      enforcement or prosecuting agencies, court personnel or  
19      attorneys, nor to bonafide treatment or professional  
20      education programs conducted by licensed physicians,  
21      psychologists or social workers.

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

1           (5) The charge of child pornography does not apply to a  
2 person who does not voluntarily possess a film, videotape,  
3 or visual reproduction or depiction by computer in which  
4 child pornography is depicted. Possession is voluntary if  
5 the defendant knowingly procures or receives a film,  
6 videotape, or visual reproduction or depiction for a  
7 sufficient time to be able to terminate his or her  
8 possession.

9           (c) Violation of paragraph (1), (4), (5), or (7) of  
10 subsection (a) is a Class 1 felony with a mandatory minimum  
11 fine of \$2,000 and a maximum fine of \$100,000. Violation of  
12 paragraph (3) of subsection (a) is a Class 1 felony with a  
13 mandatory minimum fine of \$1500 and a maximum fine of \$100,000.  
14 Violation of paragraph (2) of subsection (a) is a Class 1  
15 felony with a mandatory minimum fine of \$1000 and a maximum  
16 fine of \$100,000. Violation of paragraph (6) of subsection (a)  
17 is a Class 3 felony with a mandatory minimum fine of \$1000 and  
18 a maximum fine of \$100,000. Violation of paragraph (8) of  
19 subsection (a) is a Class A misdemeanor. Violation of paragraph  
20 (8) of subsection (a) is a Class 4 felony if the photograph,  
21 videotape, or digital image is manufactured at a playground,  
22 park facility, school, forest preserve, day care facility, or a  
23 facility providing programs or services directed to persons  
24 under 17 years of age.

25           (d) If a person is convicted of a second or subsequent  
26 violation of this Section within 10 years of a prior

1 conviction, the court shall order a presentence psychiatric  
2 examination of the person. The examiner shall report to the  
3 court whether treatment of the person is necessary.

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

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



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

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

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

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

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

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

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

26 (7) "Child" includes a film, videotape, photograph, or

1 other similar visual medium or reproduction or depiction by  
2 computer that is, or appears to be, that of a person,  
3 either in part, or in total, under the age of 18,  
4 regardless of the method by which the film, videotape,  
5 photograph, or other similar visual medium or reproduction  
6 or depiction by computer is created, adopted, or modified  
7 to appear as such. "Child" also includes a film, videotape,  
8 photograph, or other similar visual medium or reproduction  
9 or depiction by computer that is advertised, promoted,  
10 presented, described, or distributed in such a manner that  
11 conveys the impression that the film, videotape,  
12 photograph, or other similar visual medium or reproduction  
13 or depiction by computer is of a person under the age of  
14 18.

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

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

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

19 (i) Section 50-5 of Public Act 88-680, effective  
20 January 1, 1995, contained provisions amending the  
21 child pornography statute, Section 11-20.1 of the  
22 Criminal Code of 1961. Section 50-5 also contained  
23 other provisions.

24 (ii) In addition, Public Act 88-680 was entitled  
25 "AN ACT to create a Safe Neighborhoods Law". (A)  
26 Article 5 was entitled JUVENILE JUSTICE and amended the

1 Juvenile Court Act of 1987. (B) Article 15 was entitled  
2 GANGS and amended various provisions of the Criminal  
3 Code of 1961 and the Unified Code of Corrections. (C)  
4 Article 20 was entitled ALCOHOL ABUSE and amended  
5 various provisions of the Illinois Vehicle Code. (D)  
6 Article 25 was entitled DRUG ABUSE and amended the  
7 Cannabis Control Act and the Illinois Controlled  
8 Substances Act. (E) Article 30 was entitled FIREARMS  
9 and amended the Criminal Code of 1961 and the Code of  
10 Criminal Procedure of 1963. (F) Article 35 amended the  
11 Criminal Code of 1961, the Rights of Crime Victims and  
12 Witnesses Act, and the Unified Code of Corrections. (G)  
13 Article 40 amended the Criminal Code of 1961 to  
14 increase the penalty for compelling organization  
15 membership of persons. (H) Article 45 created the  
16 Secure Residential Youth Care Facility Licensing Act  
17 and amended the State Finance Act, the Juvenile Court  
18 Act of 1987, the Unified Code of Corrections, and the  
19 Private Correctional Facility Moratorium Act. (I)  
20 Article 50 amended the WIC Vendor Management Act, the  
21 Firearm Owners Identification Card Act, the Juvenile  
22 Court Act of 1987, the Criminal Code of 1961, the  
23 Wrongs to Children Act, and the Unified Code of  
24 Corrections.

25 (iii) On September 22, 1998, the Third District  
26 Appellate Court in *People v. Dainty*, 701 N.E. 2d 118,

1 ruled that Public Act 88-680 violates the single  
2 subject clause of the Illinois Constitution (Article  
3 IV, Section 8 (d)) and was unconstitutional in its  
4 entirety. As of the time this amendatory Act of 1999  
5 was prepared, People v. Dainty was still subject to  
6 appeal.

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

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

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

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

8           (Source: P.A. 94-366, eff. 7-29-05.)"; and

9           on page 18, line 24, by inserting after "offender" the  
10          following:

11          "without the permission of the parent or guardian of that  
12          child".