



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB2349

Introduced 2/14/2008, by Sen. A. J. Wilhelmi

SYNOPSIS AS INTRODUCED:

See Index

Amends the Criminal Code of 1961. Provides that it is unlawful for a child sex offender to knowingly communicate, using the Internet or any other digital media, with a person under 18 years of age or with a person whom he or she believes to be a person under 18 years of age, unless the offender is a parent or guardian of the person under 18 years of age. Provides that a person over the age of 18 who fails to exercise reasonable care in ascertaining the true age of a minor, knowingly distributes to, or sends, or causes to be sent, or exhibits to, or offers to distribute, or exhibits any harmful material to a person that he or she believes is a minor is guilty of a Class A misdemeanor. If that person utilized a computer web camera, cellular telephone, or any other type of device to manufacture the harmful material, then each offense is a Class 4 felony. Provides that the offense of child photography by a sex offender applies even if the offender does not conduct or operate a photography business. Provides that a child sex offender who photographs, videotapes, or takes a digital image of a child at a playground, park facility, school, forest preserve, day care facility, or at a facility providing programs or services directed to persons under 17 years of age is guilty of a Class 1 felony. Creates the offense of unlawful sending of a public conveyance travel ticket to a minor. Creates the offense of solicitation to meet a child. Creates the offense of manufacturing child erotica.

LRB095 19641 RLC 45985 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

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 Sections 11-9.4, 11-21, and 11-24 and by adding Sections
6 10-8.1, 11-6.6, and 11-20.4 as follows:

7 (720 ILCS 5/10-8.1 new)

8 Sec. 10-8.1. Unlawful sending of a public conveyance travel
9 ticket to a minor.

10 (a) In this Section, "public conveyance" has the meaning
11 ascribed to it in Section 10-8 of this Code.

12 (b) A person commits the offense of unlawful sending of a
13 public conveyance travel ticket to a minor when the person
14 without the consent of the minor's parent or guardian:

15 (1) knowingly sends, causes to be sent, or purchases a
16 public conveyance travel ticket to any location for a
17 person known by the offender to be an unemancipated minor
18 under 17 years of age or a person he or she believes to be a
19 minor under 17 years of age; or

20 (2) knowingly arranges for travel to any location on
21 any public conveyance for a person known by the offender to
22 be an unemancipated minor under 17 years of age or a person
23 he or she believes to be a minor under 17 years of age.

1 (c) Sentence. Unlawful sending of a public conveyance
2 travel ticket to a minor is a Class A misdemeanor. A person who
3 commits unlawful sending of a public conveyance travel ticket
4 to a minor who believes that he or she is at least 5 years older
5 than the minor is guilty of a Class 4 felony.

6 (720 ILCS 5/11-6.6 new)

7 Sec. 11-6.6. Solicitation to meet a child.

8 (a) A person of the age of 18 or more years commits the
9 offense of solicitation to meet a child if the person while
10 using a computer, cellular telephone, or any other device, with
11 the intent to meet a child or one whom he or she believes to be
12 a child, solicits, entices, induces, or arranges with the child
13 to meet at a location without the knowledge of the child's
14 parent or guardian.

15 (b) Sentence. Solicitation to meet a child is a Class A
16 misdemeanor. Solicitation to meet a child is a Class 4 felony
17 when the solicitor believes he or she is 5 or more years older
18 than the child.

19 (c) For purposes of this Section, "child" means any person
20 under 17 years of age; and "computer" has the meaning ascribed
21 to it in Section 16D-2 of this Code.

22 (720 ILCS 5/11-9.4)

23 (Text of Section after amendment by P.A. 95-640)

24 Sec. 11-9.4. Approaching, contacting, residing, or

1 communicating with a child within certain places by child sex
2 offenders prohibited.

3 (a) It is unlawful for a child sex offender to knowingly be
4 present in any public park building or on real property
5 comprising any public park when persons under the age of 18 are
6 present in the building or on the grounds and to approach,
7 contact, or communicate with a child under 18 years of age,
8 unless the offender is a parent or guardian of a person under
9 18 years of age present in the building or on the grounds.

10 (b) It is unlawful for a child sex offender to knowingly
11 loiter on a public way within 500 feet of a public park
12 building or real property comprising any public park while
13 persons under the age of 18 are present in the building or on
14 the grounds and to approach, contact, or communicate with a
15 child under 18 years of age, unless the offender is a parent or
16 guardian of a person under 18 years of age present in the
17 building or on the grounds.

18 (b-5) It is unlawful for a child sex offender to knowingly
19 reside within 500 feet of a playground, child care institution,
20 day care center, part day child care facility, or a facility
21 providing programs or services exclusively directed toward
22 persons under 18 years of age. Nothing in this subsection (b-5)
23 prohibits a child sex offender from residing within 500 feet of
24 a playground or a facility providing programs or services
25 exclusively directed toward persons under 18 years of age if
26 the property is owned by the child sex offender and was

1 purchased before the effective date of this amendatory Act of
2 the 91st General Assembly. Nothing in this subsection (b-5)
3 prohibits a child sex offender from residing within 500 feet of
4 a child care institution, day care center, or part day child
5 care facility if the property is owned by the child sex
6 offender and was purchased before the effective date of this
7 amendatory Act of the 94th General Assembly.

8 (b-6) It is unlawful for a child sex offender to knowingly
9 reside within 500 feet of the victim of the sex offense.
10 Nothing in this subsection (b-6) prohibits a child sex offender
11 from residing within 500 feet of the victim if the property in
12 which the child sex offender resides is owned by the child sex
13 offender and was purchased before the effective date of this
14 amendatory Act of the 92nd General Assembly.

15 This subsection (b-6) does not apply if the victim of the
16 sex offense is 21 years of age or older.

17 (b-7) It is unlawful for a child sex offender to knowingly
18 communicate, using the Internet or any other digital media,
19 with a person under 18 years of age or with a person whom he or
20 she believes to be a person under 18 years of age, unless the
21 offender is a parent or guardian of the person under 18 years
22 of age.

23 (c) It is unlawful for a child sex offender to knowingly
24 operate, manage, be employed by, volunteer at, be associated
25 with, or knowingly be present at any: (i) facility providing
26 programs or services exclusively directed towards persons

1 under the age of 18; (ii) day care center; (iii) part day child
2 care facility; (iv) child care institution, or (v) school
3 providing before and after school programs for children under
4 18 years of age. This does not prohibit a child sex offender
5 from owning the real property upon which the programs or
6 services are offered or upon which the day care center, part
7 day child care facility, child care institution, or school
8 providing before and after school programs for children under
9 18 years of age is located, provided the child sex offender
10 refrains from being present on the premises for the hours
11 during which: (1) the programs or services are being offered or
12 (2) the day care center, part day child care facility, child
13 care institution, or school providing before and after school
14 programs for children under 18 years of age is operated.

15 (c-5) It is unlawful for a child sex offender to knowingly
16 operate, manage, be employed by, or be associated with any
17 county fair when persons under the age of 18 are present.

18 (d) Definitions. In this Section:

19 (1) "Child sex offender" means any person who:

20 (i) has been charged under Illinois law, or any
21 substantially similar federal law or law of another
22 state, with a sex offense set forth in paragraph (2) of
23 this subsection (d) or the attempt to commit an
24 included sex offense, and:

25 (A) is convicted of such offense or an attempt
26 to commit such offense; or

1 (B) is found not guilty by reason of insanity
2 of such offense or an attempt to commit such
3 offense; or

4 (C) is found not guilty by reason of insanity
5 pursuant to subsection (c) of Section 104-25 of the
6 Code of Criminal Procedure of 1963 of such offense
7 or an attempt to commit such offense; or

8 (D) is the subject of a finding not resulting
9 in an acquittal at a hearing conducted pursuant to
10 subsection (a) of Section 104-25 of the Code of
11 Criminal Procedure of 1963 for the alleged
12 commission or attempted commission of such
13 offense; or

14 (E) is found not guilty by reason of insanity
15 following a hearing conducted pursuant to a
16 federal law or the law of another state
17 substantially similar to subsection (c) of Section
18 104-25 of the Code of Criminal Procedure of 1963 of
19 such offense or of the attempted commission of such
20 offense; or

21 (F) is the subject of a finding not resulting
22 in an acquittal at a hearing conducted pursuant to
23 a federal law or the law of another state
24 substantially similar to subsection (a) of Section
25 104-25 of the Code of Criminal Procedure of 1963
26 for the alleged violation or attempted commission

1 of such offense; or

2 (ii) is certified as a sexually dangerous person
3 pursuant to the Illinois Sexually Dangerous Persons
4 Act, or any substantially similar federal law or the
5 law of another state, when any conduct giving rise to
6 such certification is committed or attempted against a
7 person less than 18 years of age; or

8 (iii) is subject to the provisions of Section 2 of
9 the Interstate Agreements on Sexually Dangerous
10 Persons Act.

11 Convictions that result from or are connected with the
12 same act, or result from offenses committed at the same
13 time, shall be counted for the purpose of this Section as
14 one conviction. Any conviction set aside pursuant to law is
15 not a conviction for purposes of this Section.

16 (2) Except as otherwise provided in paragraph (2.5),
17 "sex offense" means:

18 (i) A violation of any of the following Sections of
19 the Criminal Code of 1961: 10-7 (aiding and abetting
20 child abduction under Section 10-5(b)(10)),
21 10-5(b)(10) (child luring), 11-6 (indecent
22 solicitation of a child), 11-6.5 (indecent
23 solicitation of an adult), 11-9 (public indecency when
24 committed in a school, on the real property comprising
25 a school, on a conveyance owned, leased, or contracted
26 by a school to transport students to or from school or

1 a school related activity, or in a public park), 11-9.1
2 (sexual exploitation of a child), 11-15.1 (soliciting
3 for a juvenile prostitute), 11-17.1 (keeping a place of
4 juvenile prostitution), 11-18.1 (patronizing a
5 juvenile prostitute), 11-19.1 (juvenile pimping),
6 11-19.2 (exploitation of a child), 11-20.1 (child
7 pornography), 11-20.3 (aggravated child pornography),
8 11-21 (harmful material), 12-14.1 (predatory criminal
9 sexual assault of a child), 12-33 (ritualized abuse of
10 a child), 11-20 (obscenity) (when that offense was
11 committed in any school, on real property comprising
12 any school, on any conveyance owned, leased, or
13 contracted by a school to transport students to or from
14 school or a school related activity, or in a public
15 park). An attempt to commit any of these offenses.

16 (ii) A violation of any of the following Sections
17 of the Criminal Code of 1961, when the victim is a
18 person under 18 years of age: 12-13 (criminal sexual
19 assault), 12-14 (aggravated criminal sexual assault),
20 12-15 (criminal sexual abuse), 12-16 (aggravated
21 criminal sexual abuse). An attempt to commit any of
22 these offenses.

23 (iii) A violation of any of the following Sections
24 of the Criminal Code of 1961, when the victim is a
25 person under 18 years of age and the defendant is not a
26 parent of the victim:

1 10-1 (kidnapping),
2 10-2 (aggravated kidnapping),
3 10-3 (unlawful restraint),
4 10-3.1 (aggravated unlawful restraint).

5 An attempt to commit any of these offenses.

6 (iv) A violation of any former law of this State
7 substantially equivalent to any offense listed in
8 clause (2)(i) of this subsection (d).

9 (2.5) For the purposes of subsection (b-5) only, a sex
10 offense means:

11 (i) A violation of any of the following Sections of
12 the Criminal Code of 1961:

13 10-5(b)(10) (child luring), 10-7 (aiding and
14 abetting child abduction under Section
15 10-5(b)(10)), 11-6 (indecent solicitation of a
16 child), 11-6.5 (indecent solicitation of an
17 adult), 11-15.1 (soliciting for a juvenile
18 prostitute), 11-17.1 (keeping a place of juvenile
19 prostitution), 11-18.1 (patronizing a juvenile
20 prostitute), 11-19.1 (juvenile pimping), 11-19.2
21 (exploitation of a child), 11-20.1 (child
22 pornography), 11-20.3 (aggravated child
23 pornography), 12-14.1 (predatory criminal sexual
24 assault of a child), or 12-33 (ritualized abuse of
25 a child). An attempt to commit any of these
26 offenses.

1 (ii) A violation of any of the following Sections
2 of the Criminal Code of 1961, when the victim is a
3 person under 18 years of age: 12-13 (criminal sexual
4 assault), 12-14 (aggravated criminal sexual assault),
5 12-16 (aggravated criminal sexual abuse), and
6 subsection (a) of Section 12-15 (criminal sexual
7 abuse). An attempt to commit any of these offenses.

8 (iii) A violation of any of the following Sections
9 of the Criminal Code of 1961, when the victim is a
10 person under 18 years of age and the defendant is not a
11 parent of the victim:

12 10-1 (kidnapping),

13 10-2 (aggravated kidnapping),

14 10-3 (unlawful restraint),

15 10-3.1 (aggravated unlawful restraint).

16 An attempt to commit any of these offenses.

17 (iv) A violation of any former law of this State
18 substantially equivalent to any offense listed in this
19 paragraph (2.5) of this subsection.

20 (3) A conviction for an offense of federal law or the
21 law of another state that is substantially equivalent to
22 any offense listed in paragraph (2) of this subsection (d)
23 shall constitute a conviction for the purpose of this
24 Section. A finding or adjudication as a sexually dangerous
25 person under any federal law or law of another state that
26 is substantially equivalent to the Sexually Dangerous

1 Persons Act shall constitute an adjudication for the
2 purposes of this Section.

3 (4) "Public park" includes a park, forest preserve, or
4 conservation area under the jurisdiction of the State or a
5 unit of local government.

6 (5) "Facility providing programs or services directed
7 towards persons under the age of 18" means any facility
8 providing programs or services exclusively directed
9 towards persons under the age of 18.

10 (6) "Loiter" means:

11 (i) Standing, sitting idly, whether or not the
12 person is in a vehicle or remaining in or around public
13 park property.

14 (ii) Standing, sitting idly, whether or not the
15 person is in a vehicle or remaining in or around public
16 park property, for the purpose of committing or
17 attempting to commit a sex offense.

18 (7) "Playground" means a piece of land owned or
19 controlled by a unit of local government that is designated
20 by the unit of local government for use solely or primarily
21 for children's recreation.

22 (8) "Child care institution" has the meaning ascribed
23 to it in Section 2.06 of the Child Care Act of 1969.

24 (9) "Day care center" has the meaning ascribed to it in
25 Section 2.09 of the Child Care Act of 1969.

26 (10) "Part day child care facility" has the meaning

1 ascribed to it in Section 2.10 of the Child Care Act of
2 1969.

3 (11) "Internet" means an interactive computer service
4 or system or an information service, system, or access
5 software provider that provides or enables computer access
6 by multiple users to a computer server, and includes, but
7 is not limited to, an information service, system, or
8 access software provider that provides access to a network
9 system commonly known as the Internet, or any comparable
10 system or service and also includes, but is not limited to,
11 a World Wide Web page, newsgroup, message board, mailing
12 list, or chat area on any interactive computer service or
13 system or other online service.

14 (e) Sentence. A person who violates this Section is guilty
15 of a Class 4 felony.

16 (Source: P.A. 94-925, eff. 6-26-06; 95-32, eff. 1-1-08; 95-640,
17 eff. 6-1-08; revised 10-30-07.)

18 (720 ILCS 5/11-20.4 new)

19 Sec. 11-20.4. Manufacturing child erotica.

20 (a) In this Section:

21 "Child" means a person under 17 years of age.

22 "Child erotica" means any photograph, videotape, or
23 digital image of a child in which the focus or concentration of
24 the photograph, videotape, or digital image is the child's
25 clothed genitals, the child's pubic area, the child's buttocks

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

3 (b) A person 18 years of age or over commits the offense of
4 manufacturing child erotica if he or she knowingly manufactures
5 child erotica without the knowledge and consent of the child's
6 parent or guardian.

7 (c) Sentence. Manufacturing child erotica is a Class A
8 misdemeanor. Manufacturing child erotica is a Class 4 felony if
9 the child erotica is manufactured at a playground, park
10 facility, school, forest preserve, day care facility, or a
11 facility providing programs or services directed to persons
12 under 17 years of age.

13 (720 ILCS 5/11-21) (from Ch. 38, par. 11-21)

14 Sec. 11-21. Harmful material.

15 (a) As used in this Section:

16 "Distribute" means transfer possession of, whether
17 with or without consideration.

18 "Harmful to minors" means that quality of any
19 description or representation, in whatever form, of
20 nudity, sexual conduct, sexual excitement, or
21 sado-masochistic abuse, when, taken as a whole, it (i)
22 predominately appeals to the prurient interest in sex of
23 minors, (ii) is patently offensive to prevailing standards
24 in the adult community in the State as a whole with respect
25 to what is suitable material for minors, and (iii) lacks

1 serious literary, artistic, political, or scientific value
2 for minors.

3 "Knowingly" means having knowledge of the contents of
4 the subject matter, or recklessly failing to exercise
5 reasonable inspection which would have disclosed the
6 contents.

7 "Material" means (i) any picture, photograph, drawing,
8 sculpture, film, video game, computer game, video or
9 similar visual depiction, including any such
10 representation or image which is stored electronically, or
11 (ii) any book, magazine, printed matter however
12 reproduced, or recorded audio of any sort.

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

14 "Nudity" means the showing of the human male or female
15 genitals, pubic area or buttocks with less than a full
16 opaque covering, or the showing of the female breast with
17 less than a fully opaque covering of any portion below the
18 top of the nipple, or the depiction of covered male
19 genitals in a discernably turgid state.

20 "Sado-masochistic abuse" means flagellation or torture
21 by or upon a person clad in undergarments, a mask or
22 bizarre costume, or the condition of being fettered, bound
23 or otherwise physically restrained on the part of one
24 clothed for sexual gratification or stimulation.

25 "Sexual conduct" means acts of masturbation, sexual
26 intercourse, or physical contact with a person's clothed or

1 unclothed genitals, pubic area, buttocks or, if such person
2 be a female, breast.

3 "Sexual excitement" means the condition of human male
4 or female genitals when in a state of sexual stimulation or
5 arousal.

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

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

12 (A) any material which depicts nudity, sexual
13 conduct or sado-masochistic abuse, or which contains
14 explicit and detailed verbal descriptions or narrative
15 accounts of sexual excitement, sexual conduct or
16 sado-masochistic abuse, and which taken as a whole is
17 harmful to minors;

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

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

24 (2) admits a minor to premises where there is exhibited
25 or to be exhibited such a motion picture, show, or other
26 presentation, knowing that the minor is a person under the

1 age of 18 or failing to exercise reasonable care in
2 ascertaining the person's true age.

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

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

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

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

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

21 (5) that an advertisement of harmful material as
22 defined in this Section culminated in the sale or
23 distribution of such harmful material to a child under
24 circumstances where there was no personal confrontation of
25 the child by the defendant, his employees, or agents, as
26 where the order or request for such harmful material was

1 transmitted by mail, telephone, Internet or similar means
2 of communication, and delivery of such harmful material to
3 the child was by mail, freight, Internet or similar means
4 of transport, which advertisement contained the following
5 statement, or a substantially similar statement, and that
6 the defendant required the purchaser to certify that he or
7 she was not under the age of 18 and that the purchaser
8 falsely stated that he or she was not under the age of 18:
9 "NOTICE: It is unlawful for any person under the age of 18
10 to purchase the matter advertised. Any person under the age
11 of 18 that falsely states that he or she is not under the
12 age of 18 for the purpose of obtaining the material
13 advertised is guilty of a Class B misdemeanor under the
14 laws of the State."

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

24 (e) Distribution of harmful material in violation of this
25 Section is a Class A misdemeanor. A second or subsequent
26 offense is a Class 4 felony.

1 (f) Any person under the age of 18 that falsely states,
2 either orally or in writing, that he or she is not under the
3 age of 18, or that presents or offers to any person any
4 evidence of age and identity that is false or not actually his
5 or her own for the purpose of ordering, obtaining, viewing, or
6 otherwise procuring or attempting to procure or view any
7 harmful material is guilty of a Class B misdemeanor.

8 (g) A person over the age of 18 who fails to exercise
9 reasonable care in ascertaining the true age of a minor,
10 knowingly distributes to, or sends, or causes to be sent, or
11 exhibits to, or offers to distribute, or exhibits any harmful
12 material to a person that he or she believes is a minor is
13 guilty of a Class A misdemeanor. If that person utilized a
14 computer web camera, cellular telephone, or any other type of
15 device to manufacture the harmful material, then each offense
16 is a Class 4 felony.

17 (Source: P.A. 94-315, eff. 1-1-06.)

18 (720 ILCS 5/11-24)

19 Sec. 11-24. Child photography by sex offender.

20 (a) In this Section:

21 "Child" means a person under 18 years of age.

22 "Child sex offender" has the meaning ascribed to it in
23 Section 11-9.3 of this Code.

24 (b) It is unlawful for a child sex offender to knowingly:

25 (1) photograph, videotape, or take ~~conduct or operate~~

1 ~~any type of business in which he or she photographs,~~
2 ~~videotapes, or takes~~ a digital image of a child; or

3 (2) instruct or direct ~~conduct or operate any type of~~
4 ~~business in which he or she instructs or directs~~ another
5 person to photograph, videotape, or take a digital image of
6 a child.

7 (c) Sentence. A violation of this Section is a Class 2
8 felony. A person who violates this Section at a playground,
9 park facility, school, forest preserve, day care facility, or
10 at a facility providing programs or services directed to
11 persons under 17 years of age is guilty of a Class 1 felony.

12 (Source: P.A. 93-905, eff. 1-1-05.)

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