



Sen. A. J. Wilhelmi

Filed: 4/10/2008

09500SB2349sam003

LRB095 19641 RLC 47949 a

1 AMENDMENT TO SENATE BILL 2349

2 AMENDMENT NO. _____. Amend Senate Bill 2349 on page 1,
3 line 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".