



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB1318

Introduced 2/18/2009, by Rep. Dennis M. Reboletti - Sandra M. Pihos - Rosemary Mulligan

SYNOPSIS AS INTRODUCED:

720 ILCS 5/11-20.1

from Ch. 38, par. 11-20.1

Amends the Criminal Code of 1961 in relation to child pornography. Provides that a person also commits the offense of child pornography when he or she knowingly films, videotapes, photographs, or otherwise depicts or portrays by means of any similar visual medium or reproduction or depicts by computer any actual or simulated act of criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault of a child, criminal sexual abuse, or aggravated criminal sexual abuse involving any child whom he or she knows or reasonably should know to be under the age of 18 or any severely or profoundly mentally retarded person, or knowingly possesses such film, videotape, photograph, or other depiction by computer. Provides that a violation is a Class X felony for which the defendant shall be sentenced to a term of imprisonment of not less than 9 years and not more than 40 years.

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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 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

1 the mouth, anus or sex organs of the child or severely
2 or profoundly mentally retarded person and the sex
3 organs of another person or animal; or

4 (iii) actually or by simulation engaged in any act
5 of masturbation; or

6 (iv) actually or by simulation portrayed as being
7 the object of, or otherwise engaged in, any act of lewd
8 fondling, touching, or caressing involving another
9 person or animal; or

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

12 (vi) actually or by simulation portrayed or
13 depicted as bound, fettered, or subject to sadistic,
14 masochistic, or sadomasochistic abuse in any sexual
15 context; or

16 (vii) depicted or portrayed in any pose, posture or
17 setting involving a lewd exhibition of the unclothed or
18 transparently clothed genitals, pubic area, buttocks,
19 or, if such person is female, a fully or partially
20 developed breast of the child or other person; or

21 (2) with the knowledge of the nature or content
22 thereof, reproduces, disseminates, offers to disseminate,
23 exhibits or possesses with intent to disseminate any film,
24 videotape, photograph or other similar visual reproduction
25 or depiction by computer of any child or severely or
26 profoundly mentally retarded person whom the person knows

1 or reasonably should know to be under the age of 18 or to
2 be a severely or profoundly mentally retarded person,
3 engaged in any activity described in subparagraphs (i)
4 through (vii) of paragraph (1) of this subsection; or

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

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

23 (5) is a parent, step-parent, legal guardian or other
24 person having care or custody of a child whom the person
25 knows or reasonably should know to be under the age of 18
26 or a severely or profoundly mentally retarded person and

1 who knowingly permits, induces, promotes, or arranges for
2 such child or severely or profoundly mentally retarded
3 person to appear in any stage play, live performance, film,
4 videotape, photograph or other similar visual
5 presentation, portrayal or simulation or depiction by
6 computer of any act or activity described in subparagraphs
7 (i) through (vii) of paragraph (1) of this subsection; or

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

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

26 (8) knowingly films, videotapes, photographs, or

1 otherwise depicts or portrays by means of any similar
2 visual medium or reproduction or depicts by computer any
3 actual or simulated act of criminal sexual assault,
4 aggravated criminal sexual assault, predatory criminal
5 sexual assault of a child, criminal sexual abuse, or
6 aggravated criminal sexual abuse involving any child whom
7 he or she knows or reasonably should know to be under the
8 age of 18 or any severely or profoundly mentally retarded
9 person, or knowingly possesses such film, videotape,
10 photograph, or other depiction by computer.

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

22 (1.5) Telecommunications carriers, commercial mobile
23 service providers, and providers of information services,
24 including, but not limited to, Internet service providers
25 and hosting service providers, are not liable under this
26 Section, except for willful and wanton misconduct, by

1 virtue of the transmission, storage, or caching of
2 electronic communications or messages of others or by
3 virtue of the provision of other related
4 telecommunications, commercial mobile services, or
5 information services used by others in violation of this
6 Section.

7 (2) (Blank).

8 (3) The charge of child pornography shall not apply to
9 the performance of official duties by law enforcement or
10 prosecuting officers or persons employed by law
11 enforcement or prosecuting agencies, court personnel or
12 attorneys, nor to bonafide treatment or professional
13 education programs conducted by licensed physicians,
14 psychologists or social workers.

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

20 (5) The charge of child pornography does not apply to a
21 person who does not voluntarily possess a film, videotape,
22 or visual reproduction or depiction by computer in which
23 child pornography is depicted. Possession is voluntary if
24 the defendant knowingly procures or receives a film,
25 videotape, or visual reproduction or depiction for a
26 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. Violation of paragraph (8) of
12 subsection (a) is a Class X felony for which the defendant
13 shall be sentenced to a term of imprisonment of not less than 9
14 years and not more than 40 years.

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

20 (e) Any film, videotape, photograph or other similar visual
21 reproduction or depiction by computer which includes a child
22 under the age of 18 or a severely or profoundly mentally
23 retarded person engaged in any activity described in
24 subparagraphs (i) through (vii) or paragraph 1 of subsection
25 (a), and any material or equipment used or intended for use in
26 photographing, filming, printing, producing, reproducing,

1 manufacturing, projecting, exhibiting, depiction by computer,
2 or disseminating such material shall be seized and forfeited in
3 the manner, method and procedure provided by Section 36-1 of
4 this Code for the seizure and forfeiture of vessels, vehicles
5 and aircraft.

6 (e-5) Upon the conclusion of a case brought under this
7 Section, the court shall seal all evidence depicting a victim
8 or witness that is sexually explicit. The evidence may be
9 unsealed and viewed, on a motion of the party seeking to unseal
10 and view the evidence, only for good cause shown and in the
11 discretion of the court. The motion must expressly set forth
12 the purpose for viewing the material. The State's attorney and
13 the victim, if possible, shall be provided reasonable notice of
14 the hearing on the motion to unseal the evidence. Any person
15 entitled to notice of a hearing under this subsection (e-5) may
16 object to the motion.

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

18 (1) "Disseminate" means (i) to sell, distribute,
19 exchange or transfer possession, whether with or without
20 consideration or (ii) to make a depiction by computer
21 available for distribution or downloading through the
22 facilities of any telecommunications network or through
23 any other means of transferring computer programs or data
24 to a computer.

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

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

2 (4) "Depict by computer" means to generate or create,
3 or cause to be created or generated, a computer program or
4 data that, after being processed by a computer either alone
5 or in conjunction with one or more computer programs,
6 results in a visual depiction on a computer monitor,
7 screen, or display.

8 (5) "Depiction by computer" means a computer program or
9 data that, after being processed by a computer either alone
10 or in conjunction with one or more computer programs,
11 results in a visual depiction on a computer monitor,
12 screen, or display.

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

16 (7) "Child" includes a film, videotape, photograph, or
17 other similar visual medium or reproduction or depiction by
18 computer that is, or appears to be, that of a person,
19 either in part, or in total, under the age of 18,
20 regardless of the method by which the film, videotape,
21 photograph, or other similar visual medium or reproduction
22 or depiction by computer is created, adopted, or modified
23 to appear as such. "Child" also includes a film, videotape,
24 photograph, or other similar visual medium or reproduction
25 or depiction by computer that is advertised, promoted,
26 presented, described, or distributed in such a manner that

1 conveys the impression that the film, videotape,
2 photograph, or other similar visual medium or reproduction
3 or depiction by computer is of a person under the age of
4 18.

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

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

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

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

14 (ii) In addition, Public Act 88-680 was entitled
15 "AN ACT to create a Safe Neighborhoods Law". (A)
16 Article 5 was entitled JUVENILE JUSTICE and amended the
17 Juvenile Court Act of 1987. (B) Article 15 was entitled
18 GANGS and amended various provisions of the Criminal
19 Code of 1961 and the Unified Code of Corrections. (C)
20 Article 20 was entitled ALCOHOL ABUSE and amended
21 various provisions of the Illinois Vehicle Code. (D)
22 Article 25 was entitled DRUG ABUSE and amended the
23 Cannabis Control Act and the Illinois Controlled
24 Substances Act. (E) Article 30 was entitled FIREARMS
25 and amended the Criminal Code of 1961 and the Code of
26 Criminal Procedure of 1963. (F) Article 35 amended the

1 Criminal Code of 1961, the Rights of Crime Victims and
2 Witnesses Act, and the Unified Code of Corrections. (G)
3 Article 40 amended the Criminal Code of 1961 to
4 increase the penalty for compelling organization
5 membership of persons. (H) Article 45 created the
6 Secure Residential Youth Care Facility Licensing Act
7 and amended the State Finance Act, the Juvenile Court
8 Act of 1987, the Unified Code of Corrections, and the
9 Private Correctional Facility Moratorium Act. (I)
10 Article 50 amended the WIC Vendor Management Act, the
11 Firearm Owners Identification Card Act, the Juvenile
12 Court Act of 1987, the Criminal Code of 1961, the
13 Wrongs to Children Act, and the Unified Code of
14 Corrections.

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

23 (iv) Child pornography is a vital concern to the
24 people of this State and the validity of future
25 prosecutions under the child pornography statute of
26 the Criminal Code of 1961 is in grave doubt.

1 (2) It is the purpose of this amendatory Act of 1999 to
2 prevent or minimize any problems relating to prosecutions
3 for child pornography that may result from challenges to
4 the constitutional validity of Public Act 88-680 by
5 re-enacting the Section relating to child pornography that
6 was included in Public Act 88-680.

7 (3) This amendatory Act of 1999 re-enacts Section
8 11-20.1 of the Criminal Code of 1961, as it has been
9 amended. This re-enactment is intended to remove any
10 question as to the validity or content of that Section; it
11 is not intended to supersede any other Public Act that
12 amends the text of the Section as set forth in this
13 amendatory Act of 1999. The material is shown as existing
14 text (i.e., without underscoring) because, as of the time
15 this amendatory Act of 1999 was prepared, *People v. Dainty*
16 was subject to appeal to the Illinois Supreme Court.

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

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