



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB2670

Introduced 2/20/2009, by Rep. Mike Fortner

SYNOPSIS AS INTRODUCED:

See Index

Amends the Criminal Code of 1961. Provides that a prosecution for child pornography that involves filming, videotaping, photographing, or otherwise depicting by computer a child under 18 years of age or a severely or profoundly mentally retarded person engaging in certain sexual acts may be commenced at any time. Provides that child pornography or aggravated child pornography that does not involve mere possession shall be deemed crimes of violence. Amends the Bill of Rights for Children. Provides that the right of a parent or legal guardian of a child victim upon his or her request, at the time of the sentencing or the disposition hearing, to address the court regarding the impact which the defendant's criminal conduct or the juvenile's delinquent conduct has had upon the child applies in cases of indecent solicitation of a child, child pornography, and aggravated child pornography. Amends the Rights of Crime Victims and Witnesses Act. Provides that the offenses of child pornography and aggravated child pornography are violent crimes. Amends the Sexually Violent Persons Commitment Act. Provides that a "sexually violent offense" includes child pornography and aggravated child pornography. Amends the Unified Code of Corrections. Provides that the commission of the offense of child pornography or aggravated child pornography is an aggravating factor in sentencing.

LRB096 08018 RLC 18123 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 3-5, 11-20.1, and 11-20.3 as follows:

6 (720 ILCS 5/3-5) (from Ch. 38, par. 3-5)

7 Sec. 3-5. General Limitations.

8 (a) A prosecution for: (1) first degree murder, attempt to
9 commit first degree murder, second degree murder, involuntary
10 manslaughter, reckless homicide, leaving the scene of a motor
11 vehicle accident involving death or personal injuries under
12 Section 11-401 of the Illinois Vehicle Code, failing to give
13 information and render aid under Section 11-403 of the Illinois
14 Vehicle Code, concealment of homicidal death, treason, arson,
15 aggravated arson, forgery, child pornography under paragraph
16 (1) of subsection (a) of Section 11-20.1, aggravated child
17 pornography under under paragraph (1) of subsection (a) of
18 Section 11-20.3, or (2) any offense involving sexual conduct or
19 sexual penetration, as defined by Section 12-12 of this Code in
20 which the DNA profile of the offender is obtained and entered
21 into a DNA database within 10 years after the commission of the
22 offense, may be commenced at any time. Clause (2) of this
23 subsection (a) applies if either: (i) the victim reported the

1 offense to law enforcement authorities within 3 years after the
2 commission of the offense unless a longer period for reporting
3 the offense to law enforcement authorities is provided in
4 Section 3-6 or (ii) the victim is murdered during the course of
5 the offense or within 2 years after the commission of the
6 offense.

7 (b) Unless the statute describing the offense provides
8 otherwise, or the period of limitation is extended by Section
9 3-6, a prosecution for any offense not designated in Subsection
10 (a) must be commenced within 3 years after the commission of
11 the offense if it is a felony, or within one year and 6 months
12 after its commission if it is a misdemeanor.

13 (Source: P.A. 94-487, eff. 11-9-05; 94-683, eff. 11-9-05;
14 95-899, eff. 1-1-09.)

15 (720 ILCS 5/11-20.1) (from Ch. 38, par. 11-20.1)
16 Sec. 11-20.1. Child pornography.

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

18 (1) films, videotapes, photographs, or otherwise
19 depicts or portrays by means of any similar visual medium
20 or reproduction or depicts by computer any child whom he
21 knows or reasonably should know to be under the age of 18
22 or any severely or profoundly mentally retarded person
23 where such child or severely or profoundly mentally
24 retarded person is:

25 (i) actually or by simulation engaged in any act of

1 sexual penetration or sexual conduct with any person or
2 animal; or

3 (ii) actually or by simulation engaged in any act
4 of sexual penetration or sexual conduct involving the
5 sex organs of the child or severely or profoundly
6 mentally retarded person and the mouth, anus, or sex
7 organs of another person or animal; or which involves
8 the mouth, anus or sex organs of the child or severely
9 or profoundly mentally retarded person and the sex
10 organs of another person or animal; or

11 (iii) actually or by simulation engaged in any act
12 of masturbation; or

13 (iv) actually or by simulation portrayed as being
14 the object of, or otherwise engaged in, any act of lewd
15 fondling, touching, or caressing involving another
16 person or animal; or

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

19 (vi) actually or by simulation portrayed or
20 depicted as bound, fettered, or subject to sadistic,
21 masochistic, or sadomasochistic abuse in any sexual
22 context; or

23 (vii) depicted or portrayed in any pose, posture or
24 setting involving a lewd exhibition of the unclothed or
25 transparently clothed genitals, pubic area, buttocks,
26 or, if such person is female, a fully or partially

1 developed breast of the child or other person; or

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

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

20 (4) solicits, uses, persuades, induces, entices, or
21 coerces any child whom he knows or reasonably should know
22 to be under the age of 18 or a severely or profoundly
23 mentally retarded person to appear in any stage play, live
24 presentation, film, videotape, photograph or other similar
25 visual reproduction or depiction by computer in which the
26 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

1 presentation, or other similar visual reproduction or
2 depiction by computer in which the child or severely or
3 profoundly mentally retarded person will be depicted,
4 actually or by simulation, in any act, pose, or setting
5 described in subparagraphs (i) through (vii) of paragraph
6 (1) of this subsection.

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

18 (2) (Blank).

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

26 (4) Possession by the defendant of more than one of the

1 same film, videotape or visual reproduction or depiction by
2 computer in which child pornography is depicted shall raise
3 a rebuttable presumption that the defendant possessed such
4 materials with the intent to disseminate them.

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

13 (6) Any violation of paragraph (1), (2), (3), (4), (5),
14 or (7) of subsection (a) that includes a child engaged in,
15 solicited for, depicted in, or posed in any act of sexual
16 penetration or bound, fettered, or subject to sadistic,
17 masochistic, or sadomasochistic abuse in a sexual context
18 shall be deemed a crime of violence.

19 (c) Violation of paragraph (1), (4), (5), or (7) of
20 subsection (a) is a Class 1 felony with a mandatory minimum
21 fine of \$2,000 and a maximum fine of \$100,000. Violation of
22 paragraph (3) of subsection (a) is a Class 1 felony with a
23 mandatory minimum fine of \$1500 and a maximum fine of \$100,000.
24 Violation of paragraph (2) of subsection (a) is a Class 1
25 felony with a mandatory minimum fine of \$1000 and a maximum
26 fine of \$100,000. Violation of paragraph (6) of subsection (a)

1 is a Class 3 felony with a mandatory minimum fine of \$1000 and
2 a maximum fine of \$100,000.

3 (d) If a person is convicted of a second or subsequent
4 violation of this Section within 10 years of a prior
5 conviction, the court shall order a presentence psychiatric
6 examination of the person. The examiner shall report to the
7 court whether treatment of the person is necessary.

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

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

1 the victim, if possible, shall be provided reasonable notice of
2 the hearing on the motion to unseal the evidence. Any person
3 entitled to notice of a hearing under this subsection (e-5) may
4 object to the motion.

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

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

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

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

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

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

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

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

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

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

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

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

1 other provisions.

2 (ii) In addition, Public Act 88-680 was entitled
3 "AN ACT to create a Safe Neighborhoods Law". (A)
4 Article 5 was entitled JUVENILE JUSTICE and amended the
5 Juvenile Court Act of 1987. (B) Article 15 was entitled
6 GANGS and amended various provisions of the Criminal
7 Code of 1961 and the Unified Code of Corrections. (C)
8 Article 20 was entitled ALCOHOL ABUSE and amended
9 various provisions of the Illinois Vehicle Code. (D)
10 Article 25 was entitled DRUG ABUSE and amended the
11 Cannabis Control Act and the Illinois Controlled
12 Substances Act. (E) Article 30 was entitled FIREARMS
13 and amended the Criminal Code of 1961 and the Code of
14 Criminal Procedure of 1963. (F) Article 35 amended the
15 Criminal Code of 1961, the Rights of Crime Victims and
16 Witnesses Act, and the Unified Code of Corrections. (G)
17 Article 40 amended the Criminal Code of 1961 to
18 increase the penalty for compelling organization
19 membership of persons. (H) Article 45 created the
20 Secure Residential Youth Care Facility Licensing Act
21 and amended the State Finance Act, the Juvenile Court
22 Act of 1987, the Unified Code of Corrections, and the
23 Private Correctional Facility Moratorium Act. (I)
24 Article 50 amended the WIC Vendor Management Act, the
25 Firearm Owners Identification Card Act, the Juvenile
26 Court Act of 1987, the Criminal Code of 1961, the

1 Wrongs to Children Act, and the Unified Code of
2 Corrections.

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

11 (iv) Child pornography is a vital concern to the
12 people of this State and the validity of future
13 prosecutions under the child pornography statute of
14 the Criminal Code of 1961 is in grave doubt.

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

21 (3) This amendatory Act of 1999 re-enacts Section
22 11-20.1 of the Criminal Code of 1961, as it has been
23 amended. This re-enactment is intended to remove any
24 question as to the validity or content of that Section; it
25 is not intended to supersede any other Public Act that
26 amends the text of the Section as set forth in this

1 amendatory Act of 1999. The material is shown as existing
2 text (i.e., without underscoring) because, as of the time
3 this amendatory Act of 1999 was prepared, People v. Dainty
4 was subject to appeal to the Illinois Supreme Court.

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

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

13 (720 ILCS 5/11-20.3)

14 Sec. 11-20.3. Aggravated child pornography.

15 (a) A person commits the offense of aggravated child
16 pornography who:

17 (1) films, videotapes, photographs, or otherwise
18 depicts or portrays by means of any similar visual medium
19 or reproduction or depicts by computer any child whom he or
20 she knows or reasonably should know to be under the age of
21 13 years where such child is:

22 (i) actually or by simulation engaged in any act of
23 sexual penetration or sexual conduct with any person or
24 animal; or

25 (ii) actually or by simulation engaged in any act

1 of sexual penetration or sexual conduct involving the
2 sex organs of the child and the mouth, anus, or sex
3 organs of another person or animal; or which involves
4 the mouth, anus or sex organs of the child and the sex
5 organs of another person or animal; or

6 (iii) actually or by simulation engaged in any act
7 of masturbation; or

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

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

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

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

23 (2) with the knowledge of the nature or content
24 thereof, reproduces, disseminates, offers to disseminate,
25 exhibits or possesses with intent to disseminate any film,
26 videotape, photograph or other similar visual reproduction

1 or depiction by computer of any child whom the person knows
2 or reasonably should know to be under the age of 13 engaged
3 in any activity described in subparagraphs (i) through
4 (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 13 engaged in
10 any activity described in subparagraphs (i) through (vii)
11 of paragraph (1) of this subsection; or

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

21 (5) is a parent, step-parent, legal guardian or other
22 person having care or custody of a child whom the person
23 knows or reasonably should know to be under the age of 13
24 and who knowingly permits, induces, promotes, or arranges
25 for such child to appear in any stage play, live
26 performance, film, videotape, photograph or other similar

1 visual presentation, portrayal or simulation or depiction
2 by computer of any act or activity described in
3 subparagraphs (i) through (vii) of paragraph (1) of this
4 subsection; or

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

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

20 (b)(1) It shall be an affirmative defense to a charge of
21 aggravated child pornography that the defendant reasonably
22 believed, under all of the circumstances, that the child was 13
23 years of age or older, but only where, prior to the act or acts
24 giving rise to a prosecution under this Section, he or she took
25 some affirmative action or made a bonafide inquiry designed to
26 ascertain whether the child was 13 years of age or older and

1 his or her reliance upon the information so obtained was
2 clearly reasonable.

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

10 (3) If the defendant possessed more than 3 of the same
11 film, videotape or visual reproduction or depiction by computer
12 in which aggravated child pornography is depicted, then the
13 trier of fact may infer that the defendant possessed such
14 materials with the intent to disseminate them.

15 (4) The charge of aggravated child pornography does not
16 apply to a person who does not voluntarily possess a film,
17 videotape, or visual reproduction or depiction by computer in
18 which aggravated child pornography is depicted. Possession is
19 voluntary if the defendant knowingly procures or receives a
20 film, videotape, or visual reproduction or depiction for a
21 sufficient time to be able to terminate his or her possession.

22 (5) Any violation of paragraph (1), (2), (3), (4), (5), or
23 (7) of subsection (a) that includes a child engaged in,
24 solicited for, depicted in, or posed in any act of sexual
25 penetration or bound, fettered, or subject to sadistic,
26 masochistic, or sadomasochistic abuse in a sexual context shall

1 be deemed a crime of violence.

2 (c) Sentence: (1) A person who commits a violation of
3 paragraph (1), (2), (3), (4), (5), or (7) of subsection (a) is
4 guilty of a Class X felony with a mandatory minimum fine of
5 \$2,000 and a maximum fine of \$100,000.

6 (2) A person who commits a violation of paragraph (6) of
7 subsection (a) is guilty of a Class 2 felony with a mandatory
8 minimum fine of \$1000 and a maximum fine of \$100,000.

9 (3) A person who commits a violation of paragraph (1), (2),
10 (3), (4), (5), or (7) of subsection (a) where the defendant has
11 previously been convicted under the laws of this State or any
12 other state of the offense of child pornography, aggravated
13 child pornography, aggravated criminal sexual abuse,
14 aggravated criminal sexual assault, predatory criminal sexual
15 assault of a child, or any of the offenses formerly known as
16 rape, deviate sexual assault, indecent liberties with a child,
17 or aggravated indecent liberties with a child where the victim
18 was under the age of 18 years or an offense that is
19 substantially equivalent to those offenses, is guilty of a
20 Class X felony for which the person shall be sentenced to a
21 term of imprisonment of not less than 9 years with a mandatory
22 minimum fine of \$2,000 and a maximum fine of \$100,000.

23 (4) A person who commits a violation of paragraph (6) of
24 subsection (a) where the defendant has previously been
25 convicted under the laws of this State or any other state of
26 the offense of child pornography, aggravated child

1 pornography, aggravated criminal sexual abuse, aggravated
2 criminal sexual assault, predatory criminal sexual assault of a
3 child, or any of the offenses formerly known as rape, deviate
4 sexual assault, indecent liberties with a child, or aggravated
5 indecent liberties with a child where the victim was under the
6 age of 18 years or an offense that is substantially equivalent
7 to those offenses, is guilty of a Class 1 felony with a
8 mandatory minimum fine of \$1000 and a maximum fine of \$100,000.

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

14 (e) Any film, videotape, photograph or other similar visual
15 reproduction or depiction by computer which includes a child
16 under the age of 13 engaged in any activity described in
17 subparagraphs (i) through (vii) of paragraph (1) of subsection
18 (a), and any material or equipment used or intended for use in
19 photographing, filming, printing, producing, reproducing,
20 manufacturing, projecting, exhibiting, depiction by computer,
21 or disseminating such material shall be seized and forfeited in
22 the manner, method and procedure provided by Section 36-1 of
23 this Code for the seizure and forfeiture of vessels, vehicles
24 and aircraft.

25 (e-5) Upon the conclusion of a case brought under this
26 Section, the court shall seal all evidence depicting a victim

1 or witness that is sexually explicit. The evidence may be
2 unsealed and viewed, on a motion of the party seeking to unseal
3 and view the evidence, only for good cause shown and in the
4 discretion of the court. The motion must expressly set forth
5 the purpose for viewing the material. The State's attorney and
6 the victim, if possible, shall be provided reasonable notice of
7 the hearing on the motion to unseal the evidence. Any person
8 entitled to notice of a hearing under this subsection (e-5) may
9 object to the motion.

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

11 (1) "Disseminate" means (i) to sell, distribute,
12 exchange or transfer possession, whether with or without
13 consideration or (ii) to make a depiction by computer
14 available for distribution or downloading through the
15 facilities of any telecommunications network or through
16 any other means of transferring computer programs or data
17 to a computer.

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

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

21 (4) "Depict by computer" means to generate or create,
22 or cause to be created or generated, a computer program or
23 data that, after being processed by a computer either alone
24 or in conjunction with one or more computer programs,
25 results in a visual depiction on a computer monitor,
26 screen, or display.

1 (5) "Depiction by computer" means a computer program or
2 data that, after being processed by a computer either alone
3 or in conjunction with one or more computer programs,
4 results in a visual depiction on a computer monitor,
5 screen, or display.

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

9 (7) For the purposes of this Section, "child" means a
10 person, either in part or in total, under the age of 13,
11 regardless of the method by which the film, videotape,
12 photograph, or other similar visual medium or reproduction
13 or depiction by computer is created, adopted, or modified
14 to appear as such.

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

17 (g) When a charge of aggravated child pornography is
18 brought, the age of the child is an element of the offense to
19 be resolved by the trier of fact as either exceeding or not
20 exceeding the age in question. The trier of fact can rely on
21 its own everyday observations and common experiences in making
22 this determination.

23 (Source: P.A. 95-579, eff. 6-1-08.)

24 Section 10. The Bill of Rights for Children is amended by
25 changing Section 3 as follows:

1 (725 ILCS 115/3) (from Ch. 38, par. 1353)

2 Sec. 3. Rights to present child impact statement.

3 (a) In any case where a defendant has been convicted of a
4 violent crime involving a child or a juvenile has been
5 adjudicated a delinquent for any offense defined in Sections
6 11-6, 11-20.1, and 11-20.3 and in Sections 12-13 through 12-16
7 of the Criminal Code of 1961, except those in which both
8 parties have agreed to the imposition of a specific sentence,
9 and a parent or legal guardian of the child involved is present
10 in the courtroom at the time of the sentencing or the
11 disposition hearing, the parent or legal guardian upon his or
12 her request shall have the right to address the court regarding
13 the impact which the defendant's criminal conduct or the
14 juvenile's delinquent conduct has had upon the child. If the
15 parent or legal guardian chooses to exercise this right, the
16 impact statement must have been prepared in writing in
17 conjunction with the Office of the State's Attorney prior to
18 the initial hearing or sentencing, before it can be presented
19 orally at the sentencing hearing. The court shall consider any
20 statements made by the parent or legal guardian, along with all
21 other appropriate factors in determining the sentence of the
22 defendant or disposition of such juvenile.

23 (b) The crime victim has the right to prepare a victim
24 impact statement and present it to the office of the State's
25 Attorney at any time during the proceedings.

1 (c) This Section shall apply to any child victims of any
2 offense defined in Sections 12-13 through 12-16 of the Criminal
3 Code of 1961 during any dispositional hearing under Section
4 5-705 of the Juvenile Court Act of 1987 which takes place
5 pursuant to an adjudication of delinquency for any such
6 offense.

7 (Source: P.A. 90-590, eff. 1-1-99.)

8 Section 15. The Rights of Crime Victims and Witnesses Act
9 is amended by changing Section 3 as follows:

10 (725 ILCS 120/3) (from Ch. 38, par. 1403)

11 Sec. 3. The terms used in this Act, unless the context
12 clearly requires otherwise, shall have the following meanings:

13 (a) "Crime victim" means (1) a person physically injured in
14 this State as a result of a violent crime perpetrated or
15 attempted against that person or (2) a person who suffers
16 injury to or loss of property as a result of a violent crime
17 perpetrated or attempted against that person or (3) a single
18 representative who may be the spouse, parent, child or sibling
19 of a person killed as a result of a violent crime perpetrated
20 against the person killed or the spouse, parent, child or
21 sibling of any person granted rights under this Act who is
22 physically or mentally incapable of exercising such rights,
23 except where the spouse, parent, child or sibling is also the
24 defendant or prisoner or (4) any person against whom a violent

1 crime has been committed or (5) any person who has suffered
2 personal injury as a result of a violation of Section 11-501 of
3 the Illinois Vehicle Code, or of a similar provision of a local
4 ordinance, or of Section 9-3 of the Criminal Code of 1961, as
5 amended or (6) in proceedings under the Juvenile Court Act of
6 1987, both parents, legal guardians, foster parents, or a
7 single adult representative of a minor or disabled person who
8 is a crime victim.

9 (b) "Witness" means any person who personally observed the
10 commission of a violent crime and who will testify on behalf of
11 the State of Illinois in the criminal prosecution of the
12 violent crime.

13 (c) "Violent Crime" means any felony in which force or
14 threat of force was used against the victim, or any offense
15 involving sexual exploitation, sexual conduct or sexual
16 penetration, or a violation of Section 11-20.1 or 11-20.3 of
17 the Criminal Code of 1961, domestic battery, violation of an
18 order of protection, stalking, or any misdemeanor which results
19 in death or great bodily harm to the victim or any violation of
20 Section 9-3 of the Criminal Code of 1961, or Section 11-501 of
21 the Illinois Vehicle Code, or a similar provision of a local
22 ordinance, if the violation resulted in personal injury or
23 death, and includes any action committed by a juvenile that
24 would be a violent crime if committed by an adult. For the
25 purposes of this paragraph, "personal injury" shall include any
26 Type A injury as indicated on the traffic accident report

1 completed by a law enforcement officer that requires immediate
2 professional attention in either a doctor's office or medical
3 facility. A type A injury shall include severely bleeding
4 wounds, distorted extremities, and injuries that require the
5 injured party to be carried from the scene.

6 (d) "Sentencing Hearing" means any hearing where a sentence
7 is imposed by the court on a convicted defendant and includes
8 hearings conducted pursuant to Sections 5-6-4, 5-6-4.1, 5-7-2
9 and 5-7-7 of the Unified Code of Corrections except those cases
10 in which both parties have agreed to the imposition of a
11 specific sentence.

12 (e) "Court proceedings" includes the preliminary hearing,
13 any hearing the effect of which may be the release of the
14 defendant from custody or to alter the conditions of bond, the
15 trial, sentencing hearing, notice of appeal, any modification
16 of sentence, probation revocation hearings or parole hearings.
17 (Source: P.A. 94-271, eff. 1-1-06; 95-591, eff. 6-1-08; 95-876,
18 eff. 8-21-08.)

19 Section 20. The Sexually Violent Persons Commitment Act is
20 amended by changing Section 5 as follows:

21 (725 ILCS 207/5)

22 Sec. 5. Definitions. As used in this Act, the term:

23 (a) "Department" means the Department of Human Services.

24 (b) "Mental disorder" means a congenital or acquired

1 condition affecting the emotional or volitional capacity that
2 predisposes a person to engage in acts of sexual violence.

3 (c) "Secretary" means the Secretary of Human Services.

4 (d) "Sexually motivated" means that one of the purposes for
5 an act is for the actor's sexual arousal or gratification.

6 (e) "Sexually violent offense" means any of the following:

7 (1) Any crime specified in Section 11-6, 11-20.1,
8 11-20.3, 12-13, 12-14, 12-14.1, or 12-16 of the Criminal
9 Code of 1961; or

10 (1.5) Any former law of this State specified in Section
11 11-1 (rape), 11-3 (deviate sexual assault), 11-4 (indecent
12 liberties with a child) or 11-4.1 ~~11-4~~ (aggravated indecent
13 liberties with a child) of the Criminal Code of 1961; or

14 (2) First degree murder, if it is determined by the
15 agency with jurisdiction to have been sexually motivated;
16 or

17 (3) Any solicitation, conspiracy or attempt to commit a
18 crime under paragraph (e) (1) or (e) (2) of this Section.

19 (f) "Sexually violent person" means a person who has been
20 convicted of a sexually violent offense, has been adjudicated
21 delinquent for a sexually violent offense, or has been found
22 not guilty of a sexually violent offense by reason of insanity
23 and who is dangerous because he or she suffers from a mental
24 disorder that makes it substantially probable that the person
25 will engage in acts of sexual violence.

26 (Source: P.A. 94-746, eff. 5-8-06; revised 10-23-08.)

1 Section 25. The Unified Code of Corrections is amended by
2 changing Section 5-5-3.2 as follows:

3 (730 ILCS 5/5-5-3.2) (from Ch. 38, par. 1005-5-3.2)

4 Sec. 5-5-3.2. Factors in Aggravation.

5 (a) The following factors shall be accorded weight in favor
6 of imposing a term of imprisonment or may be considered by the
7 court as reasons to impose a more severe sentence under Section
8 5-8-1:

9 (1) the defendant's conduct caused or threatened
10 serious harm;

11 (2) the defendant received compensation for committing
12 the offense;

13 (3) the defendant has a history of prior delinquency or
14 criminal activity;

15 (4) the defendant, by the duties of his office or by
16 his position, was obliged to prevent the particular offense
17 committed or to bring the offenders committing it to
18 justice;

19 (5) the defendant held public office at the time of the
20 offense, and the offense related to the conduct of that
21 office;

22 (6) the defendant utilized his professional reputation
23 or position in the community to commit the offense, or to
24 afford him an easier means of committing it;

1 (7) the sentence is necessary to deter others from
2 committing the same crime;

3 (8) the defendant committed the offense against a
4 person 60 years of age or older or such person's property;

5 (9) the defendant committed the offense against a
6 person who is physically handicapped or such person's
7 property;

8 (10) by reason of another individual's actual or
9 perceived race, color, creed, religion, ancestry, gender,
10 sexual orientation, physical or mental disability, or
11 national origin, the defendant committed the offense
12 against (i) the person or property of that individual; (ii)
13 the person or property of a person who has an association
14 with, is married to, or has a friendship with the other
15 individual; or (iii) the person or property of a relative
16 (by blood or marriage) of a person described in clause (i)
17 or (ii). For the purposes of this Section, "sexual
18 orientation" means heterosexuality, homosexuality, or
19 bisexuality;

20 (11) the offense took place in a place of worship or on
21 the grounds of a place of worship, immediately prior to,
22 during or immediately following worship services. For
23 purposes of this subparagraph, "place of worship" shall
24 mean any church, synagogue or other building, structure or
25 place used primarily for religious worship;

26 (12) the defendant was convicted of a felony committed

1 while he was released on bail or his own recognizance
2 pending trial for a prior felony and was convicted of such
3 prior felony, or the defendant was convicted of a felony
4 committed while he was serving a period of probation,
5 conditional discharge, or mandatory supervised release
6 under subsection (d) of Section 5-8-1 for a prior felony;

7 (13) the defendant committed or attempted to commit a
8 felony while he was wearing a bulletproof vest. For the
9 purposes of this paragraph (13), a bulletproof vest is any
10 device which is designed for the purpose of protecting the
11 wearer from bullets, shot or other lethal projectiles;

12 (14) the defendant held a position of trust or
13 supervision such as, but not limited to, family member as
14 defined in Section 12-12 of the Criminal Code of 1961,
15 teacher, scout leader, baby sitter, or day care worker, in
16 relation to a victim under 18 years of age, and the
17 defendant committed an offense in violation of Section
18 11-6, 11-11, 11-15.1, 11-19.1, 11-19.2, 11-20.1, 12-13,
19 12-14, 12-14.1, 12-15 or 12-16 of the Criminal Code of 1961
20 against that victim;

21 (15) the defendant committed an offense related to the
22 activities of an organized gang. For the purposes of this
23 factor, "organized gang" has the meaning ascribed to it in
24 Section 10 of the Streetgang Terrorism Omnibus Prevention
25 Act;

26 (16) the defendant committed an offense in violation of

1 one of the following Sections while in a school, regardless
2 of the time of day or time of year; on any conveyance
3 owned, leased, or contracted by a school to transport
4 students to or from school or a school related activity; on
5 the real property of a school; or on a public way within
6 1,000 feet of the real property comprising any school:
7 Section 10-1, 10-2, 10-5, 11-15.1, 11-17.1, 11-18.1,
8 11-19.1, 11-19.2, 12-2, 12-4, 12-4.1, 12-4.2, 12-4.3,
9 12-6, 12-6.1, 12-13, 12-14, 12-14.1, 12-15, 12-16, 18-2, or
10 33A-2 of the Criminal Code of 1961;

11 (16.5) the defendant committed an offense in violation
12 of one of the following Sections while in a day care
13 center, regardless of the time of day or time of year; on
14 the real property of a day care center, regardless of the
15 time of day or time of year; or on a public way within
16 1,000 feet of the real property comprising any day care
17 center, regardless of the time of day or time of year:
18 Section 10-1, 10-2, 10-5, 11-15.1, 11-17.1, 11-18.1,
19 11-19.1, 11-19.2, 12-2, 12-4, 12-4.1, 12-4.2, 12-4.3,
20 12-6, 12-6.1, 12-13, 12-14, 12-14.1, 12-15, 12-16, 18-2, or
21 33A-2 of the Criminal Code of 1961;

22 (17) the defendant committed the offense by reason of
23 any person's activity as a community policing volunteer or
24 to prevent any person from engaging in activity as a
25 community policing volunteer. For the purpose of this
26 Section, "community policing volunteer" has the meaning

1 ascribed to it in Section 2-3.5 of the Criminal Code of
2 1961;

3 (18) the defendant committed the offense in a nursing
4 home or on the real property comprising a nursing home. For
5 the purposes of this paragraph (18), "nursing home" means a
6 skilled nursing or intermediate long term care facility
7 that is subject to license by the Illinois Department of
8 Public Health under the Nursing Home Care Act;

9 (19) the defendant was a federally licensed firearm
10 dealer and was previously convicted of a violation of
11 subsection (a) of Section 3 of the Firearm Owners
12 Identification Card Act and has now committed either a
13 felony violation of the Firearm Owners Identification Card
14 Act or an act of armed violence while armed with a firearm;

15 (20) the defendant (i) committed the offense of
16 reckless homicide under Section 9-3 of the Criminal Code of
17 1961 or the offense of driving under the influence of
18 alcohol, other drug or drugs, intoxicating compound or
19 compounds or any combination thereof under Section 11-501
20 of the Illinois Vehicle Code or a similar provision of a
21 local ordinance and (ii) was operating a motor vehicle in
22 excess of 20 miles per hour over the posted speed limit as
23 provided in Article VI of Chapter 11 of the Illinois
24 Vehicle Code;

25 (21) the defendant (i) committed the offense of
26 reckless driving or aggravated reckless driving under

1 Section 11-503 of the Illinois Vehicle Code and (ii) was
2 operating a motor vehicle in excess of 20 miles per hour
3 over the posted speed limit as provided in Article VI of
4 Chapter 11 of the Illinois Vehicle Code;

5 (22) the defendant committed the offense against a
6 person that the defendant knew, or reasonably should have
7 known, was a member of the Armed Forces of the United
8 States serving on active duty. For purposes of this clause
9 (22), the term "Armed Forces" means any of the Armed Forces
10 of the United States, including a member of any reserve
11 component thereof or National Guard unit called to active
12 duty; ~~or~~

13 (23) the defendant committed the offense against a
14 person who was elderly, disabled, or infirm by taking
15 advantage of a family or fiduciary relationship with the
16 elderly, disabled, or infirm person; ~~or~~

17 (24) ~~(22)~~ the defendant committed any offense under
18 Section 11-20.1 of the Criminal Code of 1961 and possessed
19 100 or more images; or ~~or~~

20 (25) the defendant committed the offense of child
21 pornography or aggravated child pornography, specifically
22 including paragraph (1), (2), (3), (4), (5), or (7) of
23 subsection (a) of Section 11-20.1 of the Criminal Code of
24 1961 where a child engaged in, solicited for, depicted in,
25 or posed in any act of sexual penetration or bound,
26 fettered, or subject to sadistic, masochistic, or

1 sadomasochistic abuse in a sexual context and specifically
2 including paragraph (1), (2), (3), (4), (5), or (7) of
3 subsection (a) of Section 11-20.3 of the Criminal Code of
4 1961 where a child engaged in, solicited for, depicted in,
5 or posed in any act of sexual penetration or bound,
6 fettered, or subject to sadistic, masochistic, or
7 sadomasochistic abuse in a sexual context.

8 For the purposes of this Section:

9 "School" is defined as a public or private elementary or
10 secondary school, community college, college, or university.

11 "Day care center" means a public or private State certified
12 and licensed day care center as defined in Section 2.09 of the
13 Child Care Act of 1969 that displays a sign in plain view
14 stating that the property is a day care center.

15 (b) The following factors may be considered by the court as
16 reasons to impose an extended term sentence under Section 5-8-2
17 upon any offender:

18 (1) When a defendant is convicted of any felony, after
19 having been previously convicted in Illinois or any other
20 jurisdiction of the same or similar class felony or greater
21 class felony, when such conviction has occurred within 10
22 years after the previous conviction, excluding time spent
23 in custody, and such charges are separately brought and
24 tried and arise out of different series of acts; or

25 (2) When a defendant is convicted of any felony and the
26 court finds that the offense was accompanied by

1 exceptionally brutal or heinous behavior indicative of
2 wanton cruelty; or

3 (3) When a defendant is convicted of voluntary
4 manslaughter, second degree murder, involuntary
5 manslaughter or reckless homicide in which the defendant
6 has been convicted of causing the death of more than one
7 individual; or

8 (4) When a defendant is convicted of any felony
9 committed against:

10 (i) a person under 12 years of age at the time of
11 the offense or such person's property;

12 (ii) a person 60 years of age or older at the time
13 of the offense or such person's property; or

14 (iii) a person physically handicapped at the time
15 of the offense or such person's property; or

16 (5) In the case of a defendant convicted of aggravated
17 criminal sexual assault or criminal sexual assault, when
18 the court finds that aggravated criminal sexual assault or
19 criminal sexual assault was also committed on the same
20 victim by one or more other individuals, and the defendant
21 voluntarily participated in the crime with the knowledge of
22 the participation of the others in the crime, and the
23 commission of the crime was part of a single course of
24 conduct during which there was no substantial change in the
25 nature of the criminal objective; or

26 (6) When a defendant is convicted of any felony and the

1 offense involved any of the following types of specific
2 misconduct committed as part of a ceremony, rite,
3 initiation, observance, performance, practice or activity
4 of any actual or ostensible religious, fraternal, or social
5 group:

6 (i) the brutalizing or torturing of humans or
7 animals;

8 (ii) the theft of human corpses;

9 (iii) the kidnapping of humans;

10 (iv) the desecration of any cemetery, religious,
11 fraternal, business, governmental, educational, or
12 other building or property; or

13 (v) ritualized abuse of a child; or

14 (7) When a defendant is convicted of first degree
15 murder, after having been previously convicted in Illinois
16 of any offense listed under paragraph (c)(2) of Section
17 5-5-3, when such conviction has occurred within 10 years
18 after the previous conviction, excluding time spent in
19 custody, and such charges are separately brought and tried
20 and arise out of different series of acts; or

21 (8) When a defendant is convicted of a felony other
22 than conspiracy and the court finds that the felony was
23 committed under an agreement with 2 or more other persons
24 to commit that offense and the defendant, with respect to
25 the other individuals, occupied a position of organizer,
26 supervisor, financier, or any other position of management

1 or leadership, and the court further finds that the felony
2 committed was related to or in furtherance of the criminal
3 activities of an organized gang or was motivated by the
4 defendant's leadership in an organized gang; or

5 (9) When a defendant is convicted of a felony violation
6 of Section 24-1 of the Criminal Code of 1961 and the court
7 finds that the defendant is a member of an organized gang;
8 or

9 (10) When a defendant committed the offense using a
10 firearm with a laser sight attached to it. For purposes of
11 this paragraph (10), "laser sight" has the meaning ascribed
12 to it in Section 24.6-5 of the Criminal Code of 1961; or

13 (11) When a defendant who was at least 17 years of age
14 at the time of the commission of the offense is convicted
15 of a felony and has been previously adjudicated a
16 delinquent minor under the Juvenile Court Act of 1987 for
17 an act that if committed by an adult would be a Class X or
18 Class 1 felony when the conviction has occurred within 10
19 years after the previous adjudication, excluding time
20 spent in custody; or

21 (12) When a defendant commits an offense involving the
22 illegal manufacture of a controlled substance under
23 Section 401 of the Illinois Controlled Substances Act, the
24 illegal manufacture of methamphetamine under Section 25 of
25 the Methamphetamine Control and Community Protection Act,
26 or the illegal possession of explosives and an emergency

1 response officer in the performance of his or her duties is
2 killed or injured at the scene of the offense while
3 responding to the emergency caused by the commission of the
4 offense. In this paragraph (12), "emergency" means a
5 situation in which a person's life, health, or safety is in
6 jeopardy; and "emergency response officer" means a peace
7 officer, community policing volunteer, fireman, emergency
8 medical technician-ambulance, emergency medical
9 technician-intermediate, emergency medical
10 technician-paramedic, ambulance driver, other medical
11 assistance or first aid personnel, or hospital emergency
12 room personnel; or

13 (13) When a defendant commits any felony and the
14 defendant used, possessed, exercised control over, or
15 otherwise directed an animal to assault a law enforcement
16 officer engaged in the execution of his or her official
17 duties or in furtherance of the criminal activities of an
18 organized gang in which the defendant is engaged.

19 (b-1) For the purposes of this Section, "organized gang"
20 has the meaning ascribed to it in Section 10 of the Illinois
21 Streetgang Terrorism Omnibus Prevention Act.

22 (c) The court may impose an extended term sentence under
23 Section 5-8-2 upon any offender who was convicted of aggravated
24 criminal sexual assault or predatory criminal sexual assault of
25 a child under subsection (a)(1) of Section 12-14.1 of the
26 Criminal Code of 1961 where the victim was under 18 years of

1 age at the time of the commission of the offense.

2 (d) The court may impose an extended term sentence under
3 Section 5-8-2 upon any offender who was convicted of unlawful
4 use of weapons under Section 24-1 of the Criminal Code of 1961
5 for possessing a weapon that is not readily distinguishable as
6 one of the weapons enumerated in Section 24-1 of the Criminal
7 Code of 1961.

8 (e) The court may impose an extended term sentence under
9 Section 5-8-2 upon an offender who has been convicted of first
10 degree murder when the offender has previously been convicted
11 of domestic battery or aggravated domestic battery committed
12 against the murdered individual or has previously been
13 convicted of violation of an order of protection in which the
14 murdered individual was the protected person.

15 (Source: P.A. 94-131, eff. 7-7-05; 94-375, eff. 1-1-06; 94-556,
16 eff. 9-11-05; 94-819, eff. 5-31-06; 95-85, eff. 1-1-08; 95-362,
17 eff. 1-1-08; 95-569, eff. 6-1-08; 95-876, eff. 8-21-08; 95-942,
18 eff. 1-1-09; revised 9-23-08.)

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