



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB3282

Introduced 2/24/2011, by Rep. Dwight Kay - Patricia R. Bellock
- Sidney H. Mathias - David Harris

SYNOPSIS AS INTRODUCED:

720 ILCS 5/11-20.1

from Ch. 38, par. 11-20.1

Amends the Criminal Code of 1961. Eliminates the provision that possession by the defendant of more than one of the same film, videotape or visual reproduction or depiction by computer in which child pornography is depicted shall raise a rebuttable presumption that the defendant possessed such materials with the intent to disseminate them. Provides that possession of more than one of the same film, videotape or visual reproduction or depiction by computer in which child pornography is depicted 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.

LRB097 08252 RLC 48378 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

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.

26 (b) (1) It shall be an affirmative defense to a charge of

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

11 (2) (Blank).

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

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

25 (5) The charge of child pornography does not apply to a
26 person who does not voluntarily possess a film, videotape,

1 or visual reproduction or depiction by computer in which
2 child pornography is depicted. Possession is voluntary if
3 the defendant knowingly procures or receives a film,
4 videotape, or visual reproduction or depiction for a
5 sufficient time to be able to terminate his or her
6 possession.

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

13 (c) Violation of paragraph (1), (4), (5), or (7) of
14 subsection (a) is a Class 1 felony with a mandatory minimum
15 fine of \$2,000 and a maximum fine of \$100,000. Violation of
16 paragraph (3) of subsection (a) is a Class 1 felony with a
17 mandatory minimum fine of \$1500 and a maximum fine of \$100,000.
18 Violation of paragraph (2) of subsection (a) is a Class 1
19 felony with a mandatory minimum fine of \$1000 and a maximum
20 fine of \$100,000. Violation of paragraph (6) of subsection (a)
21 is a Class 3 felony with a mandatory minimum fine of \$1000 and
22 a maximum fine of \$100,000. Violation of paragraph (6) of
23 subsection (a) is a Class X felony for which the defendant
24 shall be sentenced to a term of imprisonment of not less than 9
25 years and not more than 40 years if the defendant possessed
26 more than one of the same film, videotape or visual

1 reproduction or depiction by computer in which child
2 pornography is depicted.

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 In addition, any person convicted under this Section is
21 subject to the property forfeiture provisions set forth in
22 Article 124B of the Code of Criminal Procedure of 1963.

23 (e-5) Upon the conclusion of a case brought under this
24 Section, the court shall seal all evidence depicting a victim
25 or witness that is sexually explicit. The evidence may be
26 unsealed and viewed, on a motion of the party seeking to unseal

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

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

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

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

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

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

25 (5) "Depiction by computer" means a computer program or
26 data that, after being processed by a computer either alone

1 or in conjunction with one or more computer programs,
2 results in a visual depiction on a computer monitor,
3 screen, or display.

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

7 (7) "Child" includes a film, videotape, photograph, or
8 other similar visual medium or reproduction or depiction by
9 computer that is, or appears to be, that of a person,
10 either in part, or in total, under the age of 18,
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. "Child" also includes a film, videotape,
15 photograph, or other similar visual medium or reproduction
16 or depiction by computer that is advertised, promoted,
17 presented, described, or distributed in such a manner that
18 conveys the impression that the film, videotape,
19 photograph, or other similar visual medium or reproduction
20 or depiction by computer is of a person under the age of
21 18.

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

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

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

26 (i) Section 50-5 of Public Act 88-680, effective

1 January 1, 1995, contained provisions amending the
2 child pornography statute, Section 11-20.1 of the
3 Criminal Code of 1961. Section 50-5 also contained
4 other provisions.

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

1 Article 50 amended the WIC Vendor Management Act, the
2 Firearm Owners Identification Card Act, the Juvenile
3 Court Act of 1987, the Criminal Code of 1961, the
4 Wrongs to Children Act, and the Unified Code of
5 Corrections.

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

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

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

24 (3) This amendatory Act of 1999 re-enacts Section
25 11-20.1 of the Criminal Code of 1961, as it has been
26 amended. This re-enactment is intended to remove any

1 question as to the validity or content of that Section; it
2 is not intended to supersede any other Public Act that
3 amends the text of the Section as set forth in this
4 amendatory Act of 1999. The material is shown as existing
5 text (i.e., without underscoring) because, as of the time
6 this amendatory Act of 1999 was prepared, *People v. Dainty*
7 was subject to appeal to the Illinois Supreme Court.

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

15 (Source: P.A. 96-292, eff. 1-1-10; 96-712, eff. 1-1-10;
16 96-1000, eff. 7-2-10.)