



Rep. Emily McAsey

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09700HB5235ham001

LRB097 16476 RLC 66561 a

1 AMENDMENT TO HOUSE BILL 5235

2 AMENDMENT NO. _____. Amend House Bill 5235 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Criminal Code of 1961 is amended by
5 changing 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 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 or
12 she knows or reasonably should know to be under the age of
13 18 ~~and at least 13 years of age~~ or any severely or
14 profoundly intellectually disabled person where such child
15 or severely or profoundly intellectually disabled person
16 is:

1 (i) actually or by simulation engaged in any act of
2 sexual penetration or sexual conduct with any person or
3 animal; or

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

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

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

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

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

24 (vii) depicted or portrayed in any pose, posture or
25 setting involving a lewd exhibition of the unclothed or
26 transparently clothed genitals, pubic area, buttocks,

1 or, if such person is female, a fully or partially
2 developed breast of the child or other person; or

3 (2) with the knowledge of the nature or content
4 thereof, reproduces, disseminates, offers to disseminate,
5 exhibits or possesses with intent to disseminate any film,
6 videotape, photograph or other similar visual reproduction
7 or depiction by computer of any child or severely or
8 profoundly intellectually disabled person whom the person
9 knows or reasonably should know to be under the age of 18
10 ~~and at least 13 years of age~~ or to be a severely or
11 profoundly intellectually disabled person, engaged in any
12 activity described in subparagraphs (i) through (vii) of
13 paragraph (1) of this subsection; or

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

23 (4) solicits, uses, persuades, induces, entices, or
24 coerces any child whom he or she knows or reasonably should
25 know to be under the age of 18 ~~and at least 13 years of age~~
26 or a severely or profoundly intellectually disabled person

1 to appear in any stage play, live presentation, film,
2 videotape, photograph or other similar visual reproduction
3 or depiction by computer in which the child or severely or
4 profoundly intellectually disabled person is or will be
5 depicted, actually or by simulation, in any act, pose or
6 setting described in subparagraphs (i) through (vii) of
7 paragraph (1) of this subsection; or

8 (5) is a parent, step-parent, legal guardian or other
9 person having care or custody of a child whom the person
10 knows or reasonably should know to be under the age of 18
11 ~~and at least 13 years of age~~ or a severely or profoundly
12 intellectually disabled person and who knowingly permits,
13 induces, promotes, or arranges for such child or severely
14 or profoundly intellectually disabled person to appear in
15 any stage play, live performance, film, videotape,
16 photograph or other similar visual presentation, portrayal
17 or simulation or depiction by computer of any act or
18 activity described in subparagraphs (i) through (vii) of
19 paragraph (1) of this subsection; or

20 (6) with knowledge of the nature or content thereof,
21 possesses any film, videotape, photograph or other similar
22 visual reproduction or depiction by computer of any child
23 or severely or profoundly intellectually disabled person
24 whom the person knows or reasonably should know to be under
25 the age of 18 ~~and at least 13 years of age~~ or to be a
26 severely or profoundly intellectually disabled person,

1 engaged in any activity described in subparagraphs (i)
2 through (vii) of paragraph (1) of this subsection; or

3 (7) solicits, or knowingly uses, persuades, induces,
4 entices, or coerces, a person to provide a child under the
5 age of 18 ~~and at least 13 years of age~~ or a severely or
6 profoundly intellectually disabled person to appear in any
7 videotape, photograph, film, stage play, live
8 presentation, or other similar visual reproduction or
9 depiction by computer in which the child or severely or
10 profoundly intellectually disabled person will be
11 depicted, actually or by simulation, in any act, pose, or
12 setting described in subparagraphs (i) through (vii) of
13 paragraph (1) of this subsection.

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

26 (1.5) Telecommunications carriers, commercial mobile

1 service providers, and providers of information services,
2 including, but not limited to, Internet service providers
3 and hosting service providers, are not liable under this
4 Section by virtue of the transmission, storage, or caching
5 of electronic communications or messages of others or by
6 virtue of the provision of other related
7 telecommunications, commercial mobile services, or
8 information services used by others in violation of this
9 Section.

10 (2) (Blank).

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

18 (4) If the defendant possessed more than one of the
19 same film, videotape or visual reproduction or depiction by
20 computer in which child pornography is depicted, then the
21 trier of fact may infer that the defendant possessed such
22 materials with the intent to disseminate them.

23 (5) The charge of child pornography does not apply to a
24 person who does not voluntarily possess a film, videotape,
25 or visual reproduction or depiction by computer in which
26 child pornography is depicted. Possession is voluntary if

1 the defendant knowingly procures or receives a film,
2 videotape, or visual reproduction or depiction for a
3 sufficient time to be able to terminate his or her
4 possession.

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

11 (c) If the violation does not involve a film, videotape, or
12 other moving depiction, a violation of paragraph (1), (4), (5),
13 or (7) of subsection (a) is a Class 1 felony with a mandatory
14 minimum fine of \$2,000 and a maximum fine of \$100,000. If the
15 violation involves a film, videotape, or other moving
16 depiction, a violation of paragraph (1), (4), (5), or (7) of
17 subsection (a) is a Class X felony with a mandatory minimum
18 fine of \$2,000 and a maximum fine of \$100,000. If the violation
19 does not involve a film, videotape, or other moving depiction,
20 a violation of paragraph (3) of subsection (a) is a Class 1
21 felony with a mandatory minimum fine of \$1500 and a maximum
22 fine of \$100,000. If the violation involves a film, videotape,
23 or other moving depiction, a violation of paragraph (3) of
24 subsection (a) is a Class X felony with a mandatory minimum
25 fine of \$1500 and a maximum fine of \$100,000. If the violation
26 does not involve a film, videotape, or other moving depiction,

1 a violation of paragraph (2) of subsection (a) is a Class 1
2 felony with a mandatory minimum fine of \$1000 and a maximum
3 fine of \$100,000. If the violation involves a film, videotape,
4 or other moving depiction, a violation of paragraph (2) of
5 subsection (a) is a Class X felony with a mandatory minimum
6 fine of \$1000 and a maximum fine of \$100,000. If the violation
7 does not involve a film, videotape, or other moving depiction,
8 a violation of paragraph (6) of subsection (a) is a Class 3
9 felony with a mandatory minimum fine of \$1000 and a maximum
10 fine of \$100,000. If the violation involves a film, videotape,
11 or other moving depiction, a violation of paragraph (6) of
12 subsection (a) is a Class 2 felony with a mandatory minimum
13 fine of \$1000 and a maximum fine of \$100,000.

14 (c-5) Where the child depicted is under the age of 13, a
15 violation of paragraph (1), (2), (3), (4), (5), or (7) of
16 subsection (a) is a Class X felony with a mandatory minimum
17 fine of \$2,000 and a maximum fine of \$100,000. Where the child
18 depicted is under the age of 13, a violation of paragraph (6)
19 of subsection (a) is a Class 2 felony with a mandatory minimum
20 fine of \$1,000 and a maximum fine of \$100,000. Where the child
21 depicted is under the age of 13, a person who commits a
22 violation of paragraph (1), (2), (3), (4), (5), or (7) of
23 subsection (a) where the defendant has previously been
24 convicted under the laws of this State or any other state of
25 the offense of child pornography, aggravated child
26 pornography, aggravated criminal sexual abuse, aggravated

1 criminal sexual assault, predatory criminal sexual assault of a
2 child, or any of the offenses formerly known as rape, deviate
3 sexual assault, indecent liberties with a child, or aggravated
4 indecent liberties with a child where the victim was under the
5 age of 18 years or an offense that is substantially equivalent
6 to those offenses, is guilty of a Class X felony for which the
7 person shall be sentenced to a term of imprisonment of not less
8 than 9 years with a mandatory minimum fine of \$2,000 and a
9 maximum fine of \$100,000. Where the child depicted is under the
10 age of 13, a person who commits a violation of paragraph (6) of
11 subsection (a) where the defendant has previously been
12 convicted under the laws of this State or any other state of
13 the offense of child pornography, aggravated child
14 pornography, aggravated criminal sexual abuse, aggravated
15 criminal sexual assault, predatory criminal sexual assault of a
16 child, or any of the offenses formerly known as rape, deviate
17 sexual assault, indecent liberties with a child, or aggravated
18 indecent liberties with a child where the victim was under the
19 age of 18 years or an offense that is substantially equivalent
20 to those offenses, is guilty of a Class 1 felony with a
21 mandatory minimum fine of \$1,000 and a maximum fine of
22 \$100,000. The issue of whether the child depicted is under the
23 age of 13 is an element of the offense to be resolved by the
24 trier of fact.

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 ~~and at least 13 years of age~~ or a severely
7 or profoundly intellectually disabled person engaged in any
8 activity described in subparagraphs (i) through (vii) or
9 paragraph 1 of subsection (a), and any material or equipment
10 used or intended for use in photographing, filming, printing,
11 producing, reproducing, manufacturing, projecting, exhibiting,
12 depiction by computer, or disseminating such material shall be
13 seized and forfeited in the manner, method and procedure
14 provided by Section 36-1 of this Code for the seizure and
15 forfeiture of vessels, vehicles and aircraft.

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

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

1 the hearing on the motion to unseal the evidence. Any person
2 entitled to notice of a hearing under this subsection (e-5) may
3 object to the motion.

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

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

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

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

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

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

26 (6) "Computer", "computer program", and "data" have

1 the meanings ascribed to them in Section 16D-2 of this
2 Code.

3 (7) For the purposes of this Section, "child
4 pornography" 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 ~~and at~~
8 ~~least 13 years of age~~ or a severely or profoundly
9 intellectually disabled ~~mentally retarded~~ person,
10 regardless of the method by which the film, videotape,
11 photograph, or other similar visual medium or reproduction
12 or depiction by computer is created, adopted, or modified
13 to appear as such. "Child pornography" also includes a
14 film, videotape, photograph, or other similar visual
15 medium or reproduction or depiction by computer that is
16 advertised, promoted, presented, described, or distributed
17 in such a manner that conveys the impression that the film,
18 videotape, photograph, or other similar visual medium or
19 reproduction or depiction by computer is of a person under
20 the age of 18 ~~and at least 13 years of age~~ or a severely or
21 profoundly intellectually disabled ~~mentally retarded~~
22 person.

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

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

25 (i) Section 50-5 of Public Act 88-680, effective
26 January 1, 1995, contained provisions amending the

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

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

1 Firearm Owners Identification Card Act, the Juvenile
2 Court Act of 1987, the Criminal Code of 1961, the
3 Wrongs to Children Act, and the Unified Code of
4 Corrections.

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

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

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

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

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

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

14 (Source: P.A. 96-292, eff. 1-1-10; 96-712, eff. 1-1-10;
15 96-1000, eff. 7-2-10; 96-1551, eff. 7-1-11; 97-157, eff.
16 1-1-12; 97-227, eff. 1-1-12; revised 9-12-11.)

17 (720 ILCS 5/11-20.1B rep.)

18 Section 10. The Criminal Code of 1961 is amended by
19 repealing Section 11-20.1B."