

1 AMENDMENT TO HOUSE BILL 221

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 221 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 11-21 as follows:

6 (720 ILCS 5/11-21) (from Ch. 38, par. 11-21)  
7 Sec. 11-21. Harmful material.

8 (a) Elements of the Offense.

9 A person who, with knowledge that a person is a child,  
10 that is a person under 18 years of age, or who fails to  
11 exercise reasonable care in ascertaining the true age of a  
12 child, knowingly distributes to or sends or causes to be sent  
13 to, or exhibits to, or offers to distribute or exhibit any  
14 harmful material to a child, is guilty of a misdemeanor.

15 (a-5) A person who, by means of a computer,  
16 intentionally distributes any harmful material to a specific  
17 individual actually known to him or her to be a child under  
18 18 years of age and the known child was intended by the  
19 distributor to receive the harmful material is guilty of a  
20 Class A misdemeanor.

21 (b) Definitions. In this Section:

22 (1) Material is harmful if, to the average person,

1 applying contemporary standards, its predominant appeal,  
2 taken as a whole, is to prurient interest, that is a shameful  
3 or morbid interest in nudity, sex, or excretion, which goes  
4 substantially beyond customary limits of candor in  
5 description or representation of such matters, and is  
6 material the redeeming social importance of which is  
7 substantially less than its prurient appeal.

8 (2) Material~~, as used in this Section~~ means any writing,  
9 picture, record or other representation or embodiment,  
10 including depiction by computer.

11 (3) Distribute means to transfer possession of, whether  
12 with or without consideration.

13 (4) Knowingly~~, as used in this section~~ means having  
14 knowledge of the contents of the subject matter, or  
15 recklessly failing to exercise reasonable inspection which  
16 would have disclosed the contents thereof.

17 (5) Computer has the meaning ascribed to it in Section  
18 16D-2 of this Code.

19 (6) Depiction by computer has the meaning ascribed to it  
20 in Section 11-20.1 of this Code.

21 (c) Interpretation of Evidence.

22 The predominant appeal to prurient interest of the  
23 material shall be judged with reference to average children  
24 of the same general age of the child to whom such material  
25 was offered, distributed, sent or exhibited, unless it  
26 appears from the nature of the matter or the circumstances of  
27 its dissemination, distribution or exhibition that it is  
28 designed for specially susceptible groups, in which case the  
29 predominant appeal of the material shall be judged with  
30 reference to its intended or probable recipient group.

31 In prosecutions under this section, where circumstances  
32 of production, presentation, sale, dissemination,  
33 distribution, or publicity indicate the material is being  
34 commercially exploited for the sake of its prurient appeal,

1 such evidence is probative with respect to the nature of the  
2 material and can justify the conclusion that the redeeming  
3 social importance of the material is in fact substantially  
4 less than its prurient appeal.

5 (d) Sentence.

6 Distribution of harmful material in violation of this  
7 Section is a Class A misdemeanor. A second or subsequent  
8 offense under subsection (a) is a Class 4 felony.

9 (e) Affirmative Defenses.

10 (1) Nothing in this section shall prohibit any public  
11 library or any library operated by an accredited institution  
12 of higher education from circulating harmful material to any  
13 person under 18 years of age, provided such circulation is in  
14 aid of a legitimate scientific or educational purpose, and it  
15 shall be an affirmative defense in any prosecution for a  
16 violation of this section that the act charged was committed  
17 in aid of legitimate scientific or educational purposes.

18 (2) Nothing in this section shall prohibit any parent  
19 from distributing to his child any harmful material.

20 (3) Proof that the defendant demanded, was shown and  
21 acted in reliance upon any of the following documents as  
22 proof of the age of a child, shall be a defense to any  
23 criminal prosecution under this section: A document issued by  
24 the federal government or any state, county or municipal  
25 government or subdivision or agency thereof, including, but  
26 not limited to, a motor vehicle operator's license, a  
27 registration certificate issued under the Federal Selective  
28 Service Act or an identification card issued to a member of  
29 the armed forces.

30 (4) In the event an advertisement of harmful material as  
31 defined in this section culminates in the sale or  
32 distribution of such harmful material to a child, under  
33 circumstances where there was no personal confrontation of  
34 the child by the defendant, his employees or agents, as where

1 the order or request for such harmful material was  
2 transmitted by mail, telephone, or similar means of  
3 communication, and delivery of such harmful material to the  
4 child was by mail, freight, or similar means of transport, it  
5 shall be a defense in any prosecution for a violation of this  
6 section that the advertisement contained the following  
7 statement, or a statement substantially similar thereto, and  
8 that the defendant required the purchaser to certify that he  
9 was not under 18 years of age and that the purchaser falsely  
10 stated that he was not under 18 years of age: "NOTICE: It is  
11 unlawful for any person under 18 years of age to purchase the  
12 matter herein advertised. Any person under 18 years of age  
13 who falsely states that he is not under 18 years of age for  
14 the purpose of obtaining the material advertised herein, is  
15 guilty of a Class B misdemeanor under the laws of the State  
16 of Illinois."

17 (f) Child Falsifying Age.

18 Any person under 18 years of age who falsely states,  
19 either orally or in writing, that he is not under the age of  
20 18 years, or who presents or offers to any person any  
21 evidence of age and identity which is false or not actually  
22 his own for the purpose of ordering, obtaining, viewing, or  
23 otherwise procuring or attempting to procure or view any  
24 harmful material, is guilty of a Class B misdemeanor.

25 (Source: P.A. 77-2638.)".