



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

**HB6244**

Introduced 2/11/2010, by Rep. Franco Coladipietro

#### SYNOPSIS AS INTRODUCED:

720 ILCS 5/11-20.1

from Ch. 38, par. 11-20.1

Amends the Criminal Code of 1961 in relation to child pornography. Provides that the commission of the offense by filming or videotaping or creating a moving image or possession of such films, videotapes, or moving images is a felony one class higher than photographing or possessing photographs of child pornography. Provides that telecommunications carriers, commercial mobile service providers, and providers of information services, including, but not limited to, Internet service providers and hosting service providers, are not liable under the child pornography statute, except for willful and wanton misconduct, by virtue of the transmission, storage, or caching of electronic communications or messages of others or by virtue of the provision of other related telecommunications, commercial mobile services, or information services used by others in violation of the child pornography statute.

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CORRECTIONAL  
BUDGET AND  
IMPACT NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 1961 is amended by changing  
5 Section 11-20.1 as follows:

6 (720 ILCS 5/11-20.1) (from Ch. 38, par. 11-20.1)

7 Sec. 11-20.1. Child pornography.

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

9 (1) films, videotapes, photographs, or otherwise  
10 depicts or portrays by means of any similar visual medium  
11 or reproduction or depicts by computer any child whom he  
12 knows or reasonably should know to be under the age of 18  
13 or any severely or profoundly mentally retarded person  
14 where such child or severely or profoundly mentally  
15 retarded person is:

16 (i) actually or by simulation engaged in any act of  
17 sexual penetration or sexual conduct with any person or  
18 animal; or

19 (ii) actually or by simulation engaged in any act  
20 of sexual penetration or sexual conduct involving the  
21 sex organs of the child or severely or profoundly  
22 mentally retarded person and the mouth, anus, or sex  
23 organs of another person or animal; or which involves

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 (1.5) Telecommunications carriers, commercial mobile  
12 service providers, and providers of information services,  
13 including, but not limited to, Internet service providers  
14 and hosting service providers, are not liable under this  
15 Section, except for willful and wanton misconduct, by  
16 virtue of the transmission, storage, or caching of  
17 electronic communications or messages of others or by  
18 virtue of the provision of other related  
19 telecommunications, commercial mobile services, or  
20 information services used by others in violation of this  
21 Section.

22 (2) (Blank).

23 (3) The charge of child pornography shall not apply to  
24 the performance of official duties by law enforcement or  
25 prosecuting officers or persons employed by law  
26 enforcement or prosecuting agencies, court personnel or

1 attorneys, nor to bonafide treatment or professional  
2 education programs conducted by licensed physicians,  
3 psychologists or social workers.

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

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

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

23 (c) If the violation does not involve a film, videotape, or  
24 other moving depiction, a violation ~~Violation~~ of paragraph (1),  
25 (4), (5), or (7) of subsection (a) is a Class 1 felony with a  
26 mandatory minimum fine of \$2,000 and a maximum fine of

1     \$100,000. If the violation involves a film, videotape, or other  
2     moving depiction, a violation of paragraph (1), (4), (5), or  
3     (7) of subsection (a) is a Class X felony with a mandatory  
4     minimum fine of \$2,000 and a maximum fine of \$100,000. If the  
5     violation does not involve a film, videotape, or other moving  
6     depiction, a violation ~~Violation~~ of paragraph (3) of subsection  
7     (a) is a Class 1 felony with a mandatory minimum fine of \$1500  
8     and a maximum fine of \$100,000. If the violation involves a  
9     film, videotape, or other moving depiction, a violation of  
10    paragraph (3) of subsection (a) is a Class X felony with a  
11    mandatory minimum fine of \$1500 and a maximum fine of \$100,000.  
12    If the violation does not involve a film, videotape, or other  
13    moving depiction, a violation ~~Violation~~ of paragraph (2) of  
14    subsection (a) is a Class 1 felony with a mandatory minimum  
15    fine of \$1000 and a maximum fine of \$100,000. If the violation  
16    involves a film, videotape, or other moving depiction, a  
17    violation of paragraph (2) of subsection (a) is a Class X  
18    felony with a mandatory minimum fine of \$1000 and a maximum  
19    fine of \$100,000. If the violation does not involve a film,  
20    videotape, or other moving depiction, a violation ~~Violation~~ of  
21    paragraph (6) of subsection (a) is a Class 3 felony with a  
22    mandatory minimum fine of \$1000 and a maximum fine of \$100,000.  
23    If the violation involves a film, videotape, or other moving  
24    depiction, a violation of paragraph (6) of subsection (a) is a  
25    Class 2 felony with a mandatory minimum fine of \$1000 and a  
26    maximum fine of \$100,000.



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

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

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

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

1 the purpose for viewing the material. The State's attorney and  
2 the victim, if possible, shall be provided reasonable notice of  
3 the hearing on the motion to unseal the evidence. Any person  
4 entitled to notice of a hearing under this subsection (e-5) may  
5 object to the motion.

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

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

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

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

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

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

1 screen, or display.

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

5 (7) "Child" includes a film, videotape, photograph, or  
6 other similar visual medium or reproduction or depiction by  
7 computer that is, or appears to be, that of a person,  
8 either in part, or in total, under the age of 18,  
9 regardless of the method by which the film, videotape,  
10 photograph, or other similar visual medium or reproduction  
11 or depiction by computer is created, adopted, or modified  
12 to appear as such. "Child" also includes a film, videotape,  
13 photograph, or other similar visual medium or reproduction  
14 or depiction by computer that is advertised, promoted,  
15 presented, described, or distributed in such a manner that  
16 conveys the impression that the film, videotape,  
17 photograph, or other similar visual medium or reproduction  
18 or depiction by computer is of a person under the age of  
19 18.

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

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

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

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

1 Criminal Code of 1961. Section 50-5 also contained  
2 other provisions.

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

1 Court Act of 1987, the Criminal Code of 1961, the  
2 Wrongs to Children Act, and the Unified Code of  
3 Corrections.

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

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

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

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

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

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

13          (Source: P.A. 96-292, eff. 1-1-10; 96-712, eff. 1-1-10; revised  
14          10-1-09.)