



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB4127

by Rep. Dwight Kay

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 if the defendant possessed more than one of the same film, videotape, or visual reproduction or depiction by computer in which child pornography is depicted, then the trier of fact may infer 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 16489 RLC 61657 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 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:

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

20 (ii) actually or by simulation engaged in any act
21 of sexual penetration or sexual conduct involving the
22 sex organs of the child or severely or profoundly
23 intellectually disabled person and the mouth, anus, or

1 sex organs of another person or animal; or which
2 involves the mouth, anus or sex organs of the child or
3 severely or profoundly intellectually disabled person
4 and the sex organs of another person or animal; or

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

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

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

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

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

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

1 profoundly intellectually disabled person whom the person
2 knows or reasonably should know to be under the age of 18
3 and at least 13 years of age or to be a severely or
4 profoundly intellectually disabled person, engaged in any
5 activity described in subparagraphs (i) through (vii) of
6 paragraph (1) of this subsection; or

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

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

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

13 (6) with knowledge of the nature or content thereof,
14 possesses any film, videotape, photograph or other similar
15 visual reproduction or depiction by computer of any child
16 or severely or profoundly intellectually disabled person
17 whom the person knows or reasonably should know to be under
18 the age of 18 and at least 13 years of age or to be a
19 severely or profoundly intellectually disabled person,
20 engaged in any activity described in subparagraphs (i)
21 through (vii) of paragraph (1) of this subsection; or

22 (7) solicits, or knowingly uses, persuades, induces,
23 entices, or coerces, a person to provide a child under the
24 age of 18 and at least 13 years of age or a severely or
25 profoundly intellectually disabled person to appear in any
26 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 intellectually disabled person will be
4 depicted, actually or by simulation, in any act, pose, or
5 setting described in subparagraphs (i) through (vii) of
6 paragraph (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 intellectually disabled person but only where,
12 prior to the act or acts giving rise to a prosecution under
13 this Section, he or she took some affirmative action or
14 made a bonafide inquiry designed to ascertain whether the
15 child was 18 years of age or older or that the person was
16 not a severely or profoundly intellectually disabled
17 person and his or her reliance upon the information so
18 obtained was clearly reasonable.

19 (1.5) Telecommunications carriers, commercial mobile
20 service providers, and providers of information services,
21 including, but not limited to, Internet service providers
22 and hosting service providers, are not liable under this
23 Section by virtue of the transmission, storage, or caching
24 of electronic communications or messages of others or by
25 virtue of the provision of other related
26 telecommunications, commercial mobile services, or

1 information services used by others in violation of this
2 Section.

3 (2) (Blank).

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

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

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

25 (6) Any violation of paragraph (1), (2), (3), (4), (5),
26 or (7) of subsection (a) that includes a child engaged in,

1 solicited for, depicted in, or posed in any act of sexual
2 penetration or bound, fettered, or subject to sadistic,
3 masochistic, or sadomasochistic abuse in a sexual context
4 shall be deemed a crime of violence.

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

1 does not involve a film, videotape, or other moving depiction,
2 a violation of paragraph (6) of subsection (a) is a Class 3
3 felony with a mandatory minimum fine of \$1000 and a maximum
4 fine of \$100,000. If the violation involves a film, videotape,
5 or other moving depiction, a violation of paragraph (6) of
6 subsection (a) is a Class 2 felony with a mandatory minimum
7 fine of \$1000 and a maximum fine of \$100,000. Violation of
8 paragraph (6) of subsection (a) is a Class X felony for which
9 the defendant shall be sentenced to a term of imprisonment of
10 not less than 9 years and not more than 40 years if the
11 defendant possessed more than one of the same film, videotape,
12 or visual reproduction or depiction by computer in which child
13 pornography is depicted.

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

19 (e) Any film, videotape, photograph or other similar visual
20 reproduction or depiction by computer which includes a child
21 under the age of 18 and at least 13 years of age or a severely
22 or profoundly intellectually disabled person engaged in any
23 activity described in subparagraphs (i) through (vii) or
24 paragraph 1 of subsection (a), and any material or equipment
25 used or intended for use in photographing, filming, printing,
26 producing, reproducing, manufacturing, projecting, exhibiting,

1 depiction by computer, or disseminating such material shall be
2 seized and forfeited in the manner, method and procedure
3 provided by Section 36-1 of this Code for the seizure and
4 forfeiture of vessels, vehicles and aircraft.

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

8 (e-5) Upon the conclusion of a case brought under this
9 Section, the court shall seal all evidence depicting a victim
10 or witness that is sexually explicit. The evidence may be
11 unsealed and viewed, on a motion of the party seeking to unseal
12 and view the evidence, only for good cause shown and in the
13 discretion of the court. The motion must expressly set forth
14 the purpose for viewing the material. The State's attorney and
15 the victim, if possible, shall be provided reasonable notice of
16 the hearing on the motion to unseal the evidence. Any person
17 entitled to notice of a hearing under this subsection (e-5) may
18 object to the motion.

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

20 (1) "Disseminate" means (i) to sell, distribute,
21 exchange or transfer possession, whether with or without
22 consideration or (ii) to make a depiction by computer
23 available for distribution or downloading through the
24 facilities of any telecommunications network or through
25 any other means of transferring computer programs or data
26 to a computer.

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

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

4 (4) "Depict by computer" means to generate or create,
5 or cause to be created or generated, a computer program or
6 data that, after being processed by a computer either alone
7 or in conjunction with one or more computer programs,
8 results in a visual depiction on a computer monitor,
9 screen, or display.

10 (5) "Depiction by computer" means a computer program or
11 data that, after being processed by a computer either alone
12 or in conjunction with one or more computer programs,
13 results in a visual depiction on a computer monitor,
14 screen, or display.

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

18 (7) For the purposes of this Section, "child
19 pornography" includes a film, videotape, photograph, or
20 other similar visual medium or reproduction or depiction by
21 computer that is, or appears to be, that of a person,
22 either in part, or in total, under the age of 18 and at
23 least 13 years of age or a severely or profoundly
24 intellectually disabled ~~mentally retarded~~ person,
25 regardless of the method by which the film, videotape,
26 photograph, or other similar visual medium or reproduction

1 or depiction by computer is created, adopted, or modified
2 to appear as such. "Child pornography" also includes a
3 film, videotape, photograph, or other similar visual
4 medium or reproduction or depiction by computer that is
5 advertised, promoted, presented, described, or distributed
6 in such a manner that conveys the impression that the film,
7 videotape, photograph, or other similar visual medium or
8 reproduction or depiction by computer is of a person under
9 the age of 18 and at least 13 years of age or a severely or
10 profoundly intellectually disabled ~~mentally retarded~~
11 person.

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

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

14 (i) Section 50-5 of Public Act 88-680, effective
15 January 1, 1995, contained provisions amending the
16 child pornography statute, Section 11-20.1 of the
17 Criminal Code of 1961. Section 50-5 also contained
18 other provisions.

19 (ii) In addition, Public Act 88-680 was entitled
20 "AN ACT to create a Safe Neighborhoods Law". (A)
21 Article 5 was entitled JUVENILE JUSTICE and amended the
22 Juvenile Court Act of 1987. (B) Article 15 was entitled
23 GANGS and amended various provisions of the Criminal
24 Code of 1961 and the Unified Code of Corrections. (C)
25 Article 20 was entitled ALCOHOL ABUSE and amended
26 various provisions of the Illinois Vehicle Code. (D)

1 Article 25 was entitled DRUG ABUSE and amended the
2 Cannabis Control Act and the Illinois Controlled
3 Substances Act. (E) Article 30 was entitled FIREARMS
4 and amended the Criminal Code of 1961 and the Code of
5 Criminal Procedure of 1963. (F) Article 35 amended the
6 Criminal Code of 1961, the Rights of Crime Victims and
7 Witnesses Act, and the Unified Code of Corrections. (G)
8 Article 40 amended the Criminal Code of 1961 to
9 increase the penalty for compelling organization
10 membership of persons. (H) Article 45 created the
11 Secure Residential Youth Care Facility Licensing Act
12 and amended the State Finance Act, the Juvenile Court
13 Act of 1987, the Unified Code of Corrections, and the
14 Private Correctional Facility Moratorium Act. (I)
15 Article 50 amended the WIC Vendor Management Act, the
16 Firearm Owners Identification Card Act, the Juvenile
17 Court Act of 1987, the Criminal Code of 1961, the
18 Wrongs to Children Act, and the Unified Code of
19 Corrections.

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

1 appeal.

2 (iv) Child pornography is a vital concern to the
3 people of this State and the validity of future
4 prosecutions under the child pornography statute of
5 the Criminal Code of 1961 is in grave doubt.

6 (2) It is the purpose of this amendatory Act of 1999 to
7 prevent or minimize any problems relating to prosecutions
8 for child pornography that may result from challenges to
9 the constitutional validity of Public Act 88-680 by
10 re-enacting the Section relating to child pornography that
11 was included in Public Act 88-680.

12 (3) This amendatory Act of 1999 re-enacts Section
13 11-20.1 of the Criminal Code of 1961, as it has been
14 amended. This re-enactment is intended to remove any
15 question as to the validity or content of that Section; it
16 is not intended to supersede any other Public Act that
17 amends the text of the Section as set forth in this
18 amendatory Act of 1999. The material is shown as existing
19 text (i.e., without underscoring) because, as of the time
20 this amendatory Act of 1999 was prepared, *People v. Dainty*
21 was subject to appeal to the Illinois Supreme Court.

22 (4) The re-enactment by this amendatory Act of 1999 of
23 Section 11-20.1 of the Criminal Code of 1961 relating to
24 child pornography that was amended by Public Act 88-680 is
25 not intended, and shall not be construed, to imply that
26 Public Act 88-680 is invalid or to limit or impair any

1 legal argument concerning whether those provisions were
2 substantially re-enacted by other Public Acts.

3 (Source: P.A. 96-292, eff. 1-1-10; 96-712, eff. 1-1-10;
4 96-1000, eff. 7-2-10; 96-1551, eff. 7-1-11; 97-157, eff.
5 1-1-12; 97-227, eff. 1-1-12; revised 9-12-11.)