

1 AN ACT in relation to 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  
5 changing Sections 11-20-1 and 33D-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  
9 who:

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

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

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

29 (iii) actually or by simulation engaged in any  
30 act of masturbation; or

31 (iv) actually or by simulation portrayed as

1           being the object of, or otherwise engaged in, any  
2           act of lewd fondling, touching, or caressing  
3           involving another person or animal; or  
4           (v) actually or by simulation engaged in any  
5           act of excretion or urination within a sexual  
6           context; or  
7           (vi) actually or by simulation portrayed or  
8           depicted as bound, fettered, or subject to sadistic,  
9           masochistic, or sadomasochistic abuse in any sexual  
10          context; or  
11          (vii) depicted or portrayed in any pose,  
12          posture or setting involving a lewd exhibition of  
13          the unclothed genitals, pubic area, buttocks, or, if  
14          such person is female, a fully or partially  
15          developed breast of the child or other person; or  
16          (2) with the knowledge of the nature or content  
17          thereof, reproduces, disseminates, offers to disseminate,  
18          exhibits or possesses with intent to disseminate any  
19          film, videotape, photograph or other similar visual  
20          reproduction or depiction by computer of any child or  
21          severely or profoundly mentally retarded person whom the  
22          person knows or reasonably should know to be under the  
23          age of 18 or to be a severely or profoundly mentally  
24          retarded person, engaged in any activity described in  
25          subparagraphs (i) through (vii) of paragraph (1) of this  
26          subsection; or  
27          (3) with knowledge of the subject matter or theme  
28          thereof, produces any stage play, live performance, film,  
29          videotape or other similar visual portrayal or depiction  
30          by computer which includes a child whom the person knows  
31          or reasonably should know to be under the age of 18 or a  
32          severely or profoundly mentally retarded person engaged  
33          in any activity described in subparagraphs (i) through  
34          (vii) of paragraph (1) of this subsection; or

1           (4) solicits, uses, persuades, induces, entices, or  
2 coerces any child whom he knows or reasonably should know  
3 to be under the age of 18 or a severely or profoundly  
4 mentally retarded person to appear in any stage play,  
5 live presentation, film, videotape, photograph or other  
6 similar visual reproduction or depiction by computer in  
7 which the child or severely or profoundly mentally  
8 retarded person is or will be depicted, actually or by  
9 simulation, in any act, pose or setting described in  
10 subparagraphs (i) through (vii) of paragraph (1) of this  
11 subsection; or

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

24           (6) with knowledge of the nature or content  
25 thereof, possesses any film, videotape, photograph or  
26 other similar visual reproduction or depiction by  
27 computer of any child or severely or profoundly mentally  
28 retarded person whom the person knows or reasonably  
29 should know to be under the age of 18 or to be a severely  
30 or profoundly mentally retarded person, engaged in any  
31 activity described in subparagraphs (i) through (vii) of  
32 paragraph (1) of this subsection; or

33           (7) solicits, uses, persuades, induces, entices, or  
34 coerces a person to provide a child under the age of 18

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

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

20 (2) (Blank).

21 (3) The charge of child pornography shall not apply  
 22 to the performance of official duties by law enforcement  
 23 or prosecuting officers, court personnel or attorneys,  
 24 nor to bonafide treatment or professional education  
 25 programs conducted by licensed physicians, psychologists  
 26 or social workers.

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

33 (5) The charge of child pornography does not apply  
 34 to a person who does not voluntarily possess a film,

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

7 (c) Violation of paragraph (1), (4), (5), or (7) of  
8 subsection (a) is a Class 1 felony with a mandatory minimum  
9 fine of \$2,000 and a maximum fine of \$100,000. Violation of  
10 paragraph (3) of subsection (a) is a Class 1 felony with a  
11 mandatory minimum fine of \$1500 and a maximum fine of  
12 \$100,000. Violation of paragraph (2) of subsection (a) is a  
13 Class 1 felony with a mandatory minimum fine of \$1000 and a  
14 maximum fine of \$100,000. Violation of paragraph (6) of  
15 subsection (a) is a Class 3 felony with a mandatory minimum  
16 fine of \$1000 and a maximum fine of \$100,000.

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

22 (e) Any film, videotape, photograph or other similar  
23 visual reproduction or depiction by computer which includes a  
24 child under the age of 18 or a severely or profoundly  
25 mentally retarded person engaged in any activity described in  
26 subparagraphs (i) through (vii) or paragraph 1 of subsection  
27 (a), and any material or equipment used or intended for use  
28 in photographing, filming, printing, producing, reproducing,  
29 manufacturing, projecting, exhibiting, depiction by computer,  
30 or disseminating such material shall be seized and forfeited  
31 in the manner, method and procedure provided by Section 36-1  
32 of this Code for the seizure and forfeiture of vessels,  
33 vehicles and aircraft.

34 (e-5) Upon the conclusion of a case brought under this

1 Section, the court shall seal all evidence depicting a victim  
 2 or witness that is sexually explicit. The evidence may be  
 3 unsealed and viewed, on a motion of the party seeking to  
 4 unseal and view the evidence, only for good cause shown and  
 5 in the discretion of the court. The motion must expressly  
 6 set forth the purpose for viewing the material. The State's  
 7 attorney and the victim, if possible, shall be provided  
 8 reasonable notice of the hearing on the motion to unseal the  
 9 evidence. Any person entitled to notice of a hearing under  
 10 this subsection (e-5) may object to the motion.

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

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

19 (2) "Produce" means to direct, promote, advertise,  
 20 publish, manufacture, issue, present or show;

21 (3) "Reproduce" means to make a duplication or  
 22 copy;

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

29 (5) "Depiction by computer" means a computer  
 30 program or data that, after being processed by a computer  
 31 either alone or in conjunction with one or more computer  
 32 programs, results in a visual depiction on a computer  
 33 monitor, screen, or display.

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

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

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

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

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

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

23 (i) Section 50-5 of Public Act 88-680,  
24 effective January 1, 1995, contained provisions  
25 amending the child pornography statute, Section  
26 11-20.1 of the Criminal Code of 1961. Section 50-5  
27 also contained other provisions.

28 (ii) In addition, Public Act 88-680 was  
29 entitled "AN ACT to create a Safe Neighborhoods  
30 Law". (A) Article 5 was entitled JUVENILE JUSTICE  
31 and amended the Juvenile Court Act of 1987. (B)  
32 Article 15 was entitled GANGS and amended various  
33 provisions of the Criminal Code of 1961 and the  
34 Unified Code of Corrections. (C) Article 20 was

1           entitled ALCOHOL ABUSE and amended various  
2           provisions of the Illinois Vehicle Code. (D)  
3           Article 25 was entitled DRUG ABUSE and amended the  
4           Cannabis Control Act and the Illinois Controlled  
5           Substances Act. (E) Article 30 was entitled FIREARMS  
6           and amended the Criminal Code of 1961 and the Code  
7           of Criminal Procedure of 1963. (F) Article 35  
8           amended the Criminal Code of 1961, the Rights of  
9           Crime Victims and Witnesses Act, and the Unified  
10          Code of Corrections. (G) Article 40 amended the  
11          Criminal Code of 1961 to increase the penalty for  
12          compelling organization membership of persons. (H)  
13          Article 45 created the Secure Residential Youth Care  
14          Facility Licensing Act and amended the State Finance  
15          Act, the Juvenile Court Act of 1987, the Unified  
16          Code of Corrections, and the Private Correctional  
17          Facility Moratorium Act. (I) Article 50 amended the  
18          WIC Vendor Management Act, the Firearm Owners  
19          Identification Card Act, the Juvenile Court Act of  
20          1987, the Criminal Code of 1961, the Wrongs to  
21          Children Act, and the Unified Code of Corrections.

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

30                 (iv) Child pornography is a vital concern to  
31          the people of this State and the validity of future  
32          prosecutions under the child pornography statute of  
33          the Criminal Code of 1961 is in grave doubt.

34                 (2) It is the purpose of this amendatory Act of

1 1999 to prevent or minimize any problems relating to  
 2 prosecutions for child pornography that may result from  
 3 challenges to the constitutional validity of Public Act  
 4 88-680 by re-enacting the Section relating to child  
 5 pornography that was included in Public Act 88-680.

6 (3) This amendatory Act of 1999 re-enacts Section  
 7 11-20.1 of the Criminal Code of 1961, as it has been  
 8 amended. This re-enactment is intended to remove any  
 9 question as to the validity or content of that Section;  
 10 it is not intended to supersede any other Public Act that  
 11 amends the text of the Section as set forth in this  
 12 amendatory Act of 1999. The material is shown as  
 13 existing text (i.e., without underscoring) because, as  
 14 of the time this amendatory Act of 1999 was prepared,  
 15 People v. Dainty was subject to appeal to the Illinois  
 16 Supreme Court.

17 (4) The re-enactment by this amendatory Act of 1999  
 18 of Section 11-20.1 of the Criminal Code of 1961 relating  
 19 to child pornography that was amended by Public Act  
 20 88-680 is not intended, and shall not be construed, to  
 21 imply that Public Act 88-680 is invalid or to limit or  
 22 impair any legal argument concerning whether those  
 23 provisions were substantially re-enacted by other Public  
 24 Acts.

25 (Source: P.A. 91-54, eff. 6-30-99; 91-229, eff. 1-1-00;  
 26 91-357, eff. 7-29-99; 92-16, eff. 6-28-01; 92-434, eff.  
 27 1-1-02.)

28 (720 ILCS 5/33D-1) (from Ch. 38, par. 33D-1)  
 29 Sec. 33D-1. (a) Contributing to the criminal delinquency  
 30 of a juvenile. Any person of the age of 17 ~~21~~ years and  
 31 upwards, who with the intent to promote or facilitate the  
 32 commission of an offense that is either a felony or  
 33 misdemeanor, solicits, compels or directs any person under

1 the age of 17 years in the commission of the offense commits  
2 the offense of contributing to the criminal delinquency of a  
3 juvenile.

4 (b) Sentence. Contributing to the criminal delinquency  
5 of a juvenile is a felony one grade higher than the offense  
6 committed, if the offense committed is a felony, except when  
7 the offense committed is first degree murder or a Class X  
8 felony. When the offense committed is first degree murder or  
9 a Class X felony, the penalty for contributing to the  
10 criminal delinquency of a juvenile is the same as the penalty  
11 for first degree murder or a Class X felony, respectively.  
12 Contributing to the criminal delinquency of a juvenile is a  
13 misdemeanor one grade higher than the offense committed, if  
14 the offense committed is a misdemeanor, except when the  
15 offense committed is a Class A misdemeanor. If the offense  
16 committed is a Class A misdemeanor, the penalty for  
17 contributing to the criminal delinquency of a juvenile is a  
18 Class 4 felony.

19 (Source: P.A. 91-337, eff. 1-1-00.)

20 Section 10. The Wrongs to Children Act is amended by  
21 changing Section 5.1 as follows:

22 (720 ILCS 150/5.1) (from Ch. 23, par. 2355.1)

23 Sec. 5.1. Permitting sexual abuse of a child.

24 (a) A person responsible for a child's welfare commits  
25 the offense of permitting sexual abuse of a child if he or  
26 she knowingly permits or allows an act of sexual abuse upon  
27 the child, or knowingly permits or allows the child to engage  
28 in prostitution as defined in Section 11-14 of the Criminal  
29 Code of 1961.

30 (b) In this Section:

31 "Child" means a minor under the age of 17 years.

32 "Person responsible for the child's welfare" means the

1 child's parent, step-parent, guardian, foster parent, or a  
2 person over 17 years of age who is responsible for the  
3 child's care at the time of the alleged sexual abuse.

4 "Sexual abuse" includes criminal sexual abuse or criminal  
5 sexual assault as defined in Section 12-13, 12-14, 12-14.1,  
6 12-15, or 12-16 of the Criminal Code of 1961.

7 (c) This Section does not apply to a person responsible  
8 for the child's welfare who, having reason to believe that  
9 sexual abuse has occurred, makes timely and reasonable  
10 efforts to stop the sexual abuse by reporting the sexual  
11 abuse in conformance with the Abused and Neglected Child  
12 Reporting Act or by reporting the sexual abuse, or causing a  
13 report to be made, to medical or law enforcement authorities.

14 (d) A person convicted of permitting the sexual abuse of  
15 a child is guilty of a Class 4 felony. A second or  
16 subsequent offense is a Class 2 felony, except that when the  
17 sexual abuse involved sexual penetration causing bodily harm  
18 to the child, it is a Class 1 felony. As a condition of any  
19 sentence of supervision, probation, conditional discharge, or  
20 mandatory supervised release, any person convicted under this  
21 Section shall be ordered to undergo child sexual abuse,  
22 domestic violence, or other appropriate training or  
23 counseling for a specified duration, with a qualified social  
24 or mental health worker. A--A--parent,--step-parent,--legal  
25 guardian,--or--other--person--having--custody--of--a--child--who  
26 knowingly--allows--or--permits--an--act--of--criminal--sexual--abuse  
27 or--criminal--sexual--assault--as--defined--in--Section--12--13,  
28 12--14,--12--14.1,--12--15--or--12--16--of--the--Criminal--Code--of--1961,  
29 upon--his--or--her--child,--or--knowingly--permits,--induces,  
30 promotes,--or--arranges--for--the--child--to--engage--in--prostitution  
31 as--defined--in--Section--11--14--of--the--Criminal--Code--of--1961,--and  
32 fails--to--take--reasonable--steps--to--prevent--its--commission--or  
33 future--occurrences--of--such--acts--commits--the--offense--of  
34 permitting--the--sexual--abuse--of--a--child.--For--purposes--of--this

1 Section, -"child"-means-a-minor-under-the-age-of-17-years-  
2 B.--Any--person--convicted-of-permitting-the-sexual-abuse  
3 of-a-child-is-guilty-of-a-Class-1-felony-  
4 (Source: P.A. 91-696, eff. 4-13-00.)

5 Section 99. Effective date. This Act takes effect upon  
6 becoming law.