



Sen. Iris Y. Martinez

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LRB095 12804 RLC 51214 a

1 AMENDMENT TO HOUSE BILL 4879

2 AMENDMENT NO. _____. Amend House Bill 4879 on page 1, by
3 replacing line 5 with the following:

4 "Sections 11-20.1 and 11-20.3 as follows:"; and

5 by replacing lines 25 and 26 on page 4 and lines 1 through 10 on
6 page 5 with the following:

7 "(1) of this subsection."; and

8 on page 7, by replacing lines 11 through 14 with the following:

9 "a maximum fine of \$100,000."; and

10 on page 12, by inserting immediately below line 24 the
11 following:

12 "(720 ILCS 5/11-20.3)

13 (This Section may contain text from a Public Act with a
14 delayed effective date)

1 Sec. 11-20.3. Aggravated child pornography.

2 (a) A person commits the offense of aggravated child
3 pornography who:

4 (1) films, videotapes, photographs, or otherwise
5 depicts or portrays by means of any similar visual medium
6 or reproduction or depicts by computer any child whom he or
7 she knows or reasonably should know to be under the age of
8 13 years where such child is:

9 (i) actually or by simulation engaged in any act of
10 sexual penetration or sexual conduct with any person or
11 animal; or

12 (ii) actually or by simulation engaged in any act
13 of sexual penetration or sexual conduct involving the
14 sex organs of the child and the mouth, anus, or sex
15 organs of another person or animal; or which involves
16 the mouth, anus or sex organs of the child and the sex
17 organs of another person or animal; or

18 (iii) actually or by simulation engaged in any act
19 of masturbation; or

20 (iv) actually or by simulation portrayed as being
21 the object of, or otherwise engaged in, any act of lewd
22 fondling, touching, or caressing involving another
23 person or animal; or

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

26 (vi) actually or by simulation portrayed or

1 depicted as bound, fettered, or subject to sadistic,
2 masochistic, or sadomasochistic abuse in any sexual
3 context; or

4 (vii) depicted or portrayed in any pose, posture or
5 setting involving a lewd exhibition of the unclothed or
6 transparently clothed genitals, pubic area, buttocks,
7 or, if such person is female, a fully or partially
8 developed breast of the child or other person; or

9 (2) with the knowledge of the nature or content
10 thereof, reproduces, disseminates, offers to disseminate,
11 exhibits or possesses with intent to disseminate any film,
12 videotape, photograph or other similar visual reproduction
13 or depiction by computer of any child whom the person knows
14 or reasonably should know to be under the age of 13 engaged
15 in any activity described in subparagraphs (i) through
16 (vii) of paragraph (1) of this subsection; or

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

24 (4) solicits, uses, persuades, induces, entices, or
25 coerces any child whom he or she knows or reasonably should
26 know to be under the age of 13 to appear in any stage play,

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

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

17 (6) with knowledge of the nature or content thereof,
18 possesses any film, videotape, photograph or other similar
19 visual reproduction or depiction by computer of any child
20 whom the person knows or reasonably should know to be under
21 the age of 13 engaged in any activity described in
22 subparagraphs (i) through (vii) of paragraph (1) of this
23 subsection; or

24 (7) solicits, or knowingly uses, persuades, induces,
25 entices, or coerces a person to provide a child under the
26 age of 13 to appear in any videotape, photograph, film,

1 stage play, live presentation, or other similar visual
2 reproduction or depiction by computer in which the child
3 will be depicted, actually or by simulation, in any act,
4 pose, or setting described in subparagraphs (i) through
5 (vii) of paragraph (1) of this subsection; or =

6 (8) knowingly films, videotapes, photographs, or
7 otherwise depicts or portrays by means of any similar
8 visual medium or reproduction or depicts by computer any
9 actual or simulated act in violation of Section 12-13,
10 12-14, 12-14.1, or 12-16 or subsection (a) of Section 12-15
11 of the Criminal Code of 1961, involving any child whom he
12 or she knows or reasonably should know to be under the age
13 of 18 or any severely or profoundly mentally retarded
14 person; or

15 (9) with knowledge of the nature or content thereof,
16 possesses any film, videotape, photograph or other similar
17 visual reproduction or depiction by computer of any actual
18 or simulated act in violation of Section 12-13, 12-14,
19 12-14.1, or 12-16 or subsection (a) of Section 12-15 of the
20 Criminal Code of 1961, involving any child whom he or she
21 knows or reasonably should know to be under the age of 18
22 or any severely or profoundly mentally retarded person.

23 (b) (1) It shall be an affirmative defense to a charge of
24 aggravated child pornography that the defendant reasonably
25 believed, under all of the circumstances, that the child was 13
26 years of age or older, but only where, prior to the act or acts

1 giving rise to a prosecution under this Section, he or she took
2 some affirmative action or made a bonafide inquiry designed to
3 ascertain whether the child was 13 years of age or older and
4 his or her reliance upon the information so obtained was
5 clearly reasonable.

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

13 (3) If the defendant possessed more than 3 of the same
14 film, videotape or visual reproduction or depiction by computer
15 in which aggravated child pornography is depicted, then the
16 trier of fact may infer that the defendant possessed such
17 materials with the intent to disseminate them.

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

25 (c) Sentence: (1) A person who commits a violation of
26 paragraph (1), (2), (3), (4), (5), ~~or~~ (7), or (8) of subsection

1 (a) is guilty of a Class X felony with a mandatory minimum fine
2 of \$2,000 and a maximum fine of \$100,000.

3 (2) A person who commits a violation of paragraph (6) or
4 (9) of subsection (a) is guilty of a Class 2 felony with a
5 mandatory minimum fine of \$1000 and a maximum fine of \$100,000.

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

20 (4) A person who commits a violation of paragraph (6) or
21 (9) of subsection (a) where the defendant has previously been
22 convicted under the laws of this State or any other state of
23 the offense of child pornography, aggravated child
24 pornography, aggravated criminal sexual abuse, aggravated
25 criminal sexual assault, predatory criminal sexual assault of a
26 child, or any of the offenses formerly known as rape, deviate

1 sexual assault, indecent liberties with a child, or aggravated
2 indecent liberties with a child where the victim was under the
3 age of 18 years or an offense that is substantially equivalent
4 to those offenses, is guilty of a Class 1 felony with a
5 mandatory minimum fine of \$1000 and a maximum fine of \$100,000.

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

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

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

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

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

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

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

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

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

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

1 results in a visual depiction on a computer monitor,
2 screen, or display.

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

6 (7) For the purposes of this Section, "child" means a
7 person, either in part or in total, under the age of 13,
8 regardless of the method by which the film, videotape,
9 photograph, or other similar visual medium or reproduction
10 or depiction by computer is created, adopted, or modified
11 to appear as such.

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

14 (g) When a charge of aggravated child pornography is
15 brought, the age of the child is an element of the offense to
16 be resolved by the trier of fact as either exceeding or not
17 exceeding the age in question. The trier of fact can rely on
18 its own everyday observations and common experiences in making
19 this determination.

20 (Source: P.A. 95-579, eff. 6-1-08.)".