

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 11-21 as follows:

6 (720 ILCS 5/11-21) (from Ch. 38, par. 11-21)  
7 (Text of Section after amendment by P.A. 95-983)  
8 Sec. 11-21. Harmful material.

9 (a) As used in this Section:

10 "Distribute" means transfer possession of, whether  
11 with or without consideration.

12 "Harmful to minors" means that quality of any  
13 description or representation, in whatever form, of  
14 nudity, sexual conduct, sexual excitement, or  
15 sado-masochistic abuse, when, taken as a whole, it (i)  
16 predominately appeals to the prurient interest in sex of  
17 minors, (ii) is patently offensive to prevailing standards  
18 in the adult community in the State as a whole with respect  
19 to what is suitable material for minors, and (iii) lacks  
20 serious literary, artistic, political, or scientific value  
21 for minors.

22 "Knowingly" means having knowledge of the contents of  
23 the subject matter, or recklessly failing to exercise

1 reasonable inspection which would have disclosed the  
2 contents.

3 "Material" means (i) any picture, photograph, drawing,  
4 sculpture, film, video game, computer game, video or  
5 similar visual depiction, including any such  
6 representation or image which is stored electronically, or  
7 (ii) any book, magazine, printed matter however  
8 reproduced, or recorded audio of any sort.

9 "Minor" means any person under the age of 18.

10 "Nudity" means the showing of the human male or female  
11 genitals, pubic area or buttocks with less than a full  
12 opaque covering, or the showing of the female breast with  
13 less than a fully opaque covering of any portion below the  
14 top of the nipple, or the depiction of covered male  
15 genitals in a discernably turgid state.

16 "Sado-masochistic abuse" means flagellation or torture  
17 by or upon a person clad in undergarments, a mask or  
18 bizarre costume, or the condition of being fettered, bound  
19 or otherwise physically restrained on the part of one  
20 clothed for sexual gratification or stimulation.

21 "Sexual conduct" means acts of masturbation, sexual  
22 intercourse, or physical contact with a person's clothed or  
23 unclothed genitals, pubic area, buttocks or, if such person  
24 be a female, breast.

25 "Sexual excitement" means the condition of human male  
26 or female genitals when in a state of sexual stimulation or

1 arousal.

2 (b) A person is guilty of distributing harmful material to  
3 a minor when he or she:

4 (1) knowingly sells, lends, distributes, exhibits to,  
5 depicts to, or gives away to a minor, knowing that the  
6 minor is under the age of 18 or failing to exercise  
7 reasonable care in ascertaining the person's true age:

8 (A) any material which depicts nudity, sexual  
9 conduct or sado-masochistic abuse, or which contains  
10 explicit and detailed verbal descriptions or narrative  
11 accounts of sexual excitement, sexual conduct or  
12 sado-masochistic abuse, and which taken as a whole is  
13 harmful to minors;

14 (B) a motion picture, show, or other presentation  
15 which depicts nudity, sexual conduct or  
16 sado-masochistic abuse and is harmful to minors; or

17 (C) an admission ticket or pass to premises where  
18 there is exhibited or to be exhibited such a motion  
19 picture, show, or other presentation; or

20 (2) admits a minor to premises where there is exhibited  
21 or to be exhibited such a motion picture, show, or other  
22 presentation, knowing that the minor is a person under the  
23 age of 18 or failing to exercise reasonable care in  
24 ascertaining the person's true age.

25 (c) In any prosecution arising under this Section, it is an  
26 affirmative defense:

1           (1) that the minor as to whom the offense is alleged to  
2 have been committed exhibited to the accused a draft card,  
3 driver's license, birth certificate or other official or  
4 apparently official document purporting to establish that  
5 the minor was 18 years of age or older, which was relied  
6 upon by the accused;

7           (2) that the defendant was in a parental or  
8 guardianship relationship with the minor or that the minor  
9 was accompanied by a parent or legal guardian;

10          (3) that the defendant was a bona fide school, museum,  
11 or public library, or was a person acting in the course of  
12 his or her employment as an employee or official of such  
13 organization or retail outlet affiliated with and serving  
14 the educational purpose of such organization;

15          (4) that the act charged was committed in aid of  
16 legitimate scientific or educational purposes; or

17          (5) that an advertisement of harmful material as  
18 defined in this Section culminated in the sale or  
19 distribution of such harmful material to a child under  
20 circumstances where there was no personal confrontation of  
21 the child by the defendant, his employees, or agents, as  
22 where the order or request for such harmful material was  
23 transmitted by mail, telephone, Internet or similar means  
24 of communication, and delivery of such harmful material to  
25 the child was by mail, freight, Internet or similar means  
26 of transport, which advertisement contained the following

1 statement, or a substantially similar statement, and that  
2 the defendant required the purchaser to certify that he or  
3 she was not under the age of 18 and that the purchaser  
4 falsely stated that he or she was not under the age of 18:  
5 "NOTICE: It is unlawful for any person under the age of 18  
6 to purchase the matter advertised. Any person under the age  
7 of 18 that falsely states that he or she is not under the  
8 age of 18 for the purpose of obtaining the material  
9 advertised is guilty of a Class B misdemeanor under the  
10 laws of the State."

11 (d) The predominant appeal to prurient interest of the  
12 material shall be judged with reference to average children of  
13 the same general age of the child to whom such material was  
14 sold, lent, distributed or given, unless it appears from the  
15 nature of the matter or the circumstances of its dissemination  
16 or distribution that it is designed for specially susceptible  
17 groups, in which case the predominant appeal of the material  
18 shall be judged with reference to its intended or probable  
19 recipient group.

20 (e) Distribution of harmful material in violation of this  
21 Section is a Class A misdemeanor. A second or subsequent  
22 offense is a Class 4 felony.

23 (f) Any person under the age of 18 that falsely states,  
24 either orally or in writing, that he or she is not under the  
25 age of 18, or that presents or offers to any person any  
26 evidence of age and identity that is false or not actually his

1 or her own for the purpose of ordering, obtaining, viewing, or  
2 otherwise procuring or attempting to procure or view any  
3 harmful material is guilty of a Class B misdemeanor.

4 (g) A person over the age of 18 who fails to exercise  
5 reasonable care in ascertaining the true age of a minor,  
6 knowingly distributes to, or sends, or causes to be sent, or  
7 exhibits to, or offers to distribute, or exhibits any harmful  
8 material to a person that he or she believes is a minor is  
9 guilty of a Class A misdemeanor. If that person utilized a  
10 computer web camera, cellular telephone, or any other type of  
11 device to manufacture the harmful material, then each offense  
12 is a Class 4 felony.

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

23 (Source: P.A. 94-315, eff. 1-1-06; 95-983, eff. 6-1-09.)