



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB4657

Introduced 1/21/2022, by Rep. Tony McCombie

SYNOPSIS AS INTRODUCED:

720 ILCS 5/11-9.1
720 ILCS 5/11-21

from Ch. 38, par. 11-9.1
from Ch. 38, par. 11-21

Amends the Criminal Code of 2012. Provides that a person also commits sexual exploitation of a child when he or she knowingly entices, coerces, or persuades a child to participate in the production of the recording or memorializing a sexual act. Provides that a violation is a Class 4 felony for a first offense and a Class 3 felony for a second or subsequent offense or if the person has been previously convicted of a sex offense. Provides that a person also commits distributing harmful material when he or she knowingly entices, coerces, or persuades a minor to participate in the production of the recording or memorializing a sexual act. Provides that a violation is a Class 4 felony if the person has been previously convicted of a sex offense. Provides that a second or subsequent violation is a Class 3 felony.

LRB102 22863 RLC 33318 b

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 2012 is amended by
5 changing Sections 11-9.1 and 11-21 as follows:

6 (720 ILCS 5/11-9.1) (from Ch. 38, par. 11-9.1)

7 Sec. 11-9.1. Sexual exploitation of a child.

8 (a) A person commits sexual exploitation of a child if in
9 the presence or virtual presence, or both, of a child and with
10 knowledge that a child or one whom he or she believes to be a
11 child would view his or her acts, that person:

12 (1) engages in a sexual act; ~~or~~

13 (2) exposes his or her sex organs, anus or breast for
14 the purpose of sexual arousal or gratification of such
15 person or the child or one whom he or she believes to be a
16 child; ~~or~~

17 (3) knowingly entices, coerces, or persuades a child
18 to participate in the production of the recording or
19 memorializing a sexual act.

20 (a-5) A person commits sexual exploitation of a child who
21 knowingly entices, coerces, or persuades a child to remove the
22 child's clothing for the purpose of sexual arousal or
23 gratification of the person or the child, or both.

1 (b) Definitions. As used in this Section:

2 "Sexual act" means masturbation, sexual conduct or sexual
3 penetration as defined in Section 11-0.1 of this Code.

4 "Sex offense" means any violation of Article 11 of this
5 Code.

6 "Child" means a person under 17 years of age.

7 "Virtual presence" means an environment that is created
8 with software and presented to the user and or receiver via the
9 Internet, in such a way that the user appears in front of the
10 receiver on the computer monitor or screen or hand-held
11 portable electronic device, usually through a web camming
12 program. "Virtual presence" includes primarily experiencing
13 through sight or sound, or both, a video image that can be
14 explored interactively at a personal computer or hand-held
15 communication device, or both.

16 "Webcam" means a video capturing device connected to a
17 computer or computer network that is designed to take digital
18 photographs or live or recorded video which allows for the
19 live transmission to an end user over the Internet.

20 (c) Sentence.

21 (1) Sexual exploitation of a child is a Class A
22 misdemeanor. A second or subsequent violation of this
23 Section or a substantially similar law of another state is
24 a Class 4 felony.

25 (2) Sexual exploitation of a child is a Class 4 felony
26 if the person has been previously convicted of a sex

1 offense.

2 (3) Sexual exploitation of a child is a Class 4 felony
3 if the victim was under 13 years of age at the time of the
4 commission of the offense.

5 (4) Sexual exploitation of a child is a Class 4 felony
6 if committed by a person 18 years of age or older who is on
7 or within 500 feet of elementary or secondary school
8 grounds when children are present on the grounds.

9 (5) A violation of paragraph (3) of subsection (a) is:
10 a Class 4 felony for a first offense; and a Class 3 felony
11 for a second or subsequent offense, or if the person has
12 been previously convicted of a sex offense.

13

14 (Source: P.A. 102-168, eff. 7-27-21.)

15 (720 ILCS 5/11-21) (from Ch. 38, par. 11-21)

16 Sec. 11-21. Harmful material.

17 (a) As used in this Section:

18 "Distribute" means to transfer possession of, whether
19 with or without consideration.

20 "Harmful to minors" means that quality of any
21 description or representation, in whatever form, of
22 nudity, sexual conduct, sexual excitement, or
23 sado-masochistic abuse, when, taken as a whole, it (i)
24 predominantly ~~predominately~~ appeals to the prurient
25 interest in sex of minors, (ii) is patently offensive to

1 prevailing standards in the adult community in the State
2 as a whole with respect to what is suitable material for
3 minors, and (iii) lacks serious literary, artistic,
4 political, or scientific value for minors.

5 "Knowingly" means having knowledge of the contents of
6 the subject matter, or recklessly failing to exercise
7 reasonable inspection which would have disclosed the
8 contents.

9 "Material" means (i) any picture, photograph, drawing,
10 sculpture, film, video game, computer game, video or
11 similar visual depiction, including any such
12 representation or image which is stored electronically, or
13 (ii) any book, magazine, printed matter however
14 reproduced, or recorded audio of any sort.

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

16 "Nudity" means the showing of the human male or female
17 genitals, pubic area or buttocks with less than a fully
18 opaque covering, or the showing of the female breast with
19 less than a fully opaque covering of any portion below the
20 top of the nipple, or the depiction of covered male
21 genitals in a discernibly turgid state.

22 "Sado-masochistic abuse" means flagellation or torture
23 by or upon a person clad in undergarments, a mask or
24 bizarre costume, or the condition of being fettered, bound
25 or otherwise physically restrained on the part of one
26 clothed for sexual gratification or stimulation.

1 "Sexual conduct" means acts of masturbation, sexual
2 intercourse, or physical contact with a person's clothed
3 or unclothed genitals, pubic area, buttocks or, if such
4 person be a female, breast.

5 "Sexual excitement" means the condition of human male
6 or female genitals when in a state of sexual stimulation
7 or arousal.

8 "Sex offense" and "sexual act" have the meanings
9 ascribed to them in Section 11-9.1.

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

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

16 (A) any material which depicts nudity, sexual
17 conduct or sado-masochistic abuse, or which contains
18 explicit and detailed verbal descriptions or narrative
19 accounts of sexual excitement, sexual conduct or
20 sado-masochistic abuse, and which taken as a whole is
21 harmful to minors;

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

25 (C) an admission ticket or pass to premises where
26 there is exhibited or to be exhibited such a motion

1 picture, show, or other presentation; ~~or~~

2 (2) admits a minor to premises where there is
3 exhibited or to be exhibited such a motion picture, show,
4 or other presentation, knowing that the minor is a person
5 under the age of 18 or failing to exercise reasonable care
6 in ascertaining the person's true age; or ~~or~~

7 (3) knowingly entices, coerces, or persuades a minor
8 to participate in the production of the recording or
9 memorializing a sexual act.

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

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

18 (2) that the defendant was in a parental or
19 guardianship relationship with the minor or that the minor
20 was accompanied by a parent or legal guardian;

21 (3) that the defendant was a bona fide school, museum,
22 or public library, or was a person acting in the course of
23 his or her employment as an employee or official of such
24 organization or retail outlet affiliated with and serving
25 the educational purpose of such organization;

26 (4) that the act charged was committed in aid of

1 legitimate scientific or educational purposes; or

2 (5) that an advertisement of harmful material as
3 defined in this Section culminated in the sale or
4 distribution of such harmful material to a child under
5 circumstances where there was no personal confrontation of
6 the child by the defendant, his or her employees, or
7 agents, as where the order or request for such harmful
8 material was transmitted by mail, telephone, Internet or
9 similar means of communication, and delivery of such
10 harmful material to the child was by mail, freight,
11 Internet or similar means of transport, which
12 advertisement contained the following statement, or a
13 substantially similar statement, and that the defendant
14 required the purchaser to certify that he or she was not
15 under the age of 18 and that the purchaser falsely stated
16 that he or she was not under the age of 18: "NOTICE: It is
17 unlawful for any person under the age of 18 to purchase the
18 matter advertised. Any person under the age of 18 that
19 falsely states that he or she is not under the age of 18
20 for the purpose of obtaining the material advertised is
21 guilty of a Class B misdemeanor under the laws of the
22 State."

23 (d) The predominant appeal to prurient interest of the
24 material shall be judged with reference to average children of
25 the same general age of the child to whom such material was
26 sold, lent, distributed or given, unless it appears from the

1 nature of the matter or the circumstances of its dissemination
2 or distribution that it is designed for specially susceptible
3 groups, in which case the predominant appeal of the material
4 shall be judged with reference to its intended or probable
5 recipient group.

6 (e) Distribution of harmful material in violation of this
7 Section is a Class A misdemeanor. A second or subsequent
8 offense is a Class 4 felony. A violation of paragraph (3) of
9 subsection (b) is a Class 4 felony if the person has been
10 previously convicted of a sex offense. A second or subsequent
11 violation of paragraph (3) of subsection (b) is a Class 3
12 felony.

13 (f) Any person under the age of 18 who falsely states,
14 either orally or in writing, that he or she is not under the
15 age of 18, or who presents or offers to any person any evidence
16 of age and identity that is false or not actually his or her
17 own with the intent of ordering, obtaining, viewing, or
18 otherwise procuring or attempting to procure or view any
19 harmful material is guilty of a Class B misdemeanor.

20 (g) A person over the age of 18 who fails to exercise
21 reasonable care in ascertaining the true age of a minor,
22 knowingly distributes to, or sends, or causes to be sent, or
23 exhibits to, or offers to distribute, or exhibits any harmful
24 material to a person that he or she believes is a minor is
25 guilty of a Class A misdemeanor. If that person utilized a
26 computer web camera, cellular telephone, or any other type of

1 device to manufacture the harmful material, then each offense
2 is a Class 4 felony.

3 (h) Telecommunications carriers, commercial mobile service
4 providers, and providers of information services, including,
5 but not limited to, Internet service providers and hosting
6 service providers, are not liable under this Section, except
7 for willful and wanton misconduct, by virtue of the
8 transmission, storage, or caching of electronic communications
9 or messages of others or by virtue of the provision of other
10 related telecommunications, commercial mobile services, or
11 information services used by others in violation of this
12 Section.

13 (Source: P.A. 99-642, eff. 7-28-16.)