

HB4837



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB4837

Introduced 2/7/2024, by Rep. Abdelnasser Rashid

SYNOPSIS AS INTRODUCED:

720 ILCS 5/11-20.1

from Ch. 38, par. 11-20.1

Amends the Criminal Code of 2012. Provides that for purposes of violating the child pornography law, depicting a person under 18 years of age personally engaging in or personally simulating any act of sexual penetration or sexual conduct includes a representation of a real or fictitious person through use of artificially intelligent software or computer-generated means, who is, or who a reasonable person would regard as being, a real person under 18 years of age, engaging in or simulating any act of sexual penetration or sexual conduct.

LRB103 38161 RLC 68294 b

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 2012 is amended by
5 changing 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
12 or she knows or reasonably should know to be under the age
13 of 18 or any person with a severe or profound intellectual
14 disability where such child or person with a severe or
15 profound intellectual disability is:

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

19 (ii) actually or by simulation engaged in any act
20 of sexual penetration or sexual conduct involving the
21 sex organs of the child or person with a severe or
22 profound intellectual disability and the mouth, anus,
23 or sex organs of another person or animal; or which

1 involves the mouth, anus or sex organs of the child or
2 person with a severe or profound intellectual
3 disability and the sex organs of another person or
4 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
12 of 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
18 or setting involving a lewd exhibition of the
19 unclothed or transparently clothed genitals, pubic
20 area, buttocks, or, if such person is female, a fully
21 or partially developed breast of the child or other
22 person; or

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

1 or depiction by computer of any child or person with a
2 severe or profound intellectual disability whom the person
3 knows or reasonably should know to be under the age of 18
4 or to be a person with a severe or profound intellectual
5 disability, engaged in any activity described in
6 subparagraphs (i) through (vii) of paragraph (1) of this
7 subsection; or

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

16 (4) solicits, uses, persuades, induces, entices, or
17 coerces any child whom he or she knows or reasonably
18 should know to be under the age of 18 or a person with a
19 severe or profound intellectual disability to appear in
20 any stage play, live presentation, film, videotape,
21 photograph or other similar visual reproduction or
22 depiction by computer in which the child or person with a
23 severe or profound intellectual disability 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 or a person with a severe or profound intellectual
5 disability and who knowingly permits, induces, promotes,
6 or arranges for such child or person with a severe or
7 profound intellectual disability to appear in any stage
8 play, live performance, film, videotape, photograph or
9 other similar visual presentation, portrayal or simulation
10 or depiction by computer of any act or activity described
11 in subparagraphs (i) through (vii) of paragraph (1) of
12 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 person with a severe or profound intellectual
17 disability whom the person knows or reasonably should know
18 to be under the age of 18 or to be a person with a severe
19 or profound intellectual disability, engaged in any
20 activity described in subparagraphs (i) through (vii) of
21 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 or a person with a severe or profound
25 intellectual disability to appear in any videotape,
26 photograph, film, stage play, live presentation, or other

1 similar visual reproduction or depiction by computer in
2 which the child or person with a severe or profound
3 intellectual disability will be depicted, actually or by
4 simulation, in any act, pose, or setting described in
5 subparagraphs (i) through (vii) of paragraph (1) of this
6 subsection.

7 (a-1) For purposes of paragraphs (1) through (7) of
8 subsection (a), depicting a person under 18 years of age
9 personally engaging in or personally simulating any act of
10 sexual penetration or sexual conduct includes a representation
11 of a real or fictitious person through use of artificially
12 intelligent software or computer-generated means, who is, or
13 who a reasonable person would regard as being, a real person
14 under 18 years of age, engaging in or simulating any act of
15 sexual penetration or sexual conduct.

16 (a-5) The possession of each individual film, videotape,
17 photograph, or other similar visual reproduction or depiction
18 by computer in violation of this Section constitutes a single
19 and separate violation. This subsection (a-5) does not apply
20 to multiple copies of the same film, videotape, photograph, or
21 other similar visual reproduction or depiction by computer
22 that are identical to each other.

23 (b) (1) It shall be an affirmative defense to a charge of
24 child pornography that the defendant reasonably believed,
25 under all of the circumstances, that the child was 18 years of
26 age or older or that the person was not a person with a severe

1 or profound intellectual disability but only where, prior to
2 the act or acts giving rise to a prosecution under this
3 Section, he or she took some affirmative action or made a
4 bonafide inquiry designed to ascertain whether the child was
5 18 years of age or older or that the person was not a person
6 with a severe or profound intellectual disability and his or
7 her reliance upon the information so obtained was clearly
8 reasonable.

9 (1.5) Telecommunications carriers, commercial mobile
10 service providers, and providers of information services,
11 including, but not limited to, Internet service providers and
12 hosting service providers, are not liable under this Section
13 by virtue of the transmission, storage, or caching of
14 electronic communications or messages of others or by virtue
15 of the provision of other related telecommunications,
16 commercial mobile services, or information services used by
17 others in violation of this Section.

18 (2) (Blank).

19 (3) The charge of child pornography shall not apply to the
20 performance of official duties by law enforcement or
21 prosecuting officers or persons employed by law enforcement or
22 prosecuting agencies, court personnel or attorneys, nor to
23 bonafide treatment or professional education programs
24 conducted by licensed physicians, psychologists or social
25 workers. In any criminal proceeding, any property or material
26 that constitutes child pornography shall remain in the care,

1 custody, and control of either the State or the court. A motion
2 to view the evidence shall comply with subsection (e-5) of
3 this Section.

4 (4) If the defendant possessed more than one of the same
5 film, videotape or visual reproduction or depiction by
6 computer in which child pornography is depicted, then the
7 trier of fact may infer that the defendant possessed such
8 materials with the intent to disseminate them.

9 (5) The charge of child pornography does not apply to a
10 person who does not voluntarily possess a film, videotape, or
11 visual reproduction or depiction by computer in which child
12 pornography is depicted. Possession is voluntary if the
13 defendant knowingly procures or receives a film, videotape, or
14 visual reproduction or depiction for a sufficient time to be
15 able to terminate his or her possession.

16 (6) Any violation of paragraph (1), (2), (3), (4), (5), or
17 (7) of subsection (a) that includes a child engaged in,
18 solicited for, depicted in, or posed in any act of sexual
19 penetration or bound, fettered, or subject to sadistic,
20 masochistic, or sadomasochistic abuse in a sexual context
21 shall be deemed a crime of violence.

22 (c) If the violation does not involve a film, videotape,
23 or other moving depiction, a violation of paragraph (1), (4),
24 (5), or (7) of subsection (a) is a Class 1 felony with a
25 mandatory minimum fine of \$2,000 and a maximum fine of
26 \$100,000. If the violation involves a film, videotape, or

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

26 (c-5) Where the child depicted is under the age of 13, a

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

1 criminal sexual assault, predatory criminal sexual assault of
2 a child, or any of the offenses formerly known as rape, deviate
3 sexual assault, indecent liberties with a child, or aggravated
4 indecent liberties with a child where the victim was under the
5 age of 18 years or an offense that is substantially equivalent
6 to those offenses, is guilty of a Class 1 felony with a
7 mandatory minimum fine of \$1,000 and a maximum fine of
8 \$100,000. The issue of whether the child depicted is under the
9 age of 13 is an element of the offense to be resolved by the
10 trier of fact.

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

16 (e) Any film, videotape, photograph or other similar
17 visual reproduction or depiction by computer which includes a
18 child under the age of 18 or a person with a severe or profound
19 intellectual disability engaged in any activity described in
20 subparagraphs (i) through (vii) or paragraph 1 of subsection
21 (a), and any material or equipment used or intended for use in
22 photographing, filming, printing, producing, reproducing,
23 manufacturing, projecting, exhibiting, depiction by computer,
24 or disseminating such material shall be seized and forfeited
25 in the manner, method and procedure provided by Section 36-1
26 of this Code for the seizure and forfeiture of vessels,

1 vehicles and aircraft.

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

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

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

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

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

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

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

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

12 (6) "Computer", "computer program", and "data" have
13 the meanings ascribed to them in Section 17.05 of this
14 Code.

15 (7) For the purposes of this Section, "child
16 pornography" includes a film, videotape, photograph, or
17 other similar visual medium or reproduction or depiction
18 by computer that is, or appears to be, that of a person,
19 either in part, or in total, under the age of 18 or a
20 person with a severe or profound intellectual disability,
21 regardless of the method by which the film, videotape,
22 photograph, or other similar visual medium or reproduction
23 or depiction by computer is created, adopted, or modified
24 to appear as such. "Child pornography" also includes a
25 film, videotape, photograph, or other similar visual
26 medium or reproduction or depiction by computer that is

1 advertised, promoted, presented, described, or distributed
2 in such a manner that conveys the impression that the
3 film, videotape, photograph, or other similar visual
4 medium or reproduction or depiction by computer is of a
5 person under the age of 18 or a person with a severe or
6 profound intellectual disability.

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

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

9 (i) Section 50-5 of Public Act 88-680, effective
10 January 1, 1995, contained provisions amending the
11 child pornography statute, Section 11-20.1 of the
12 Criminal Code of 1961. Section 50-5 also contained
13 other provisions.

14 (ii) In addition, Public Act 88-680 was entitled
15 "AN ACT to create a Safe Neighborhoods Law". (A)
16 Article 5 was entitled JUVENILE JUSTICE and amended
17 the Juvenile Court Act of 1987. (B) Article 15 was
18 entitled GANGS and amended various provisions of the
19 Criminal Code of 1961 and the Unified Code of
20 Corrections. (C) Article 20 was entitled ALCOHOL ABUSE
21 and amended various provisions of the Illinois Vehicle
22 Code. (D) Article 25 was entitled DRUG ABUSE and
23 amended the Cannabis Control Act and the Illinois
24 Controlled Substances Act. (E) Article 30 was entitled
25 FIREARMS and amended the Criminal Code of 1961 and the
26 Code of Criminal Procedure of 1963. (F) Article 35

1 amended the Criminal Code of 1961, the Rights of Crime
2 Victims and Witnesses Act, and the Unified Code of
3 Corrections. (G) Article 40 amended the Criminal Code
4 of 1961 to increase the penalty for compelling
5 organization membership of persons. (H) Article 45
6 created the Secure Residential Youth Care Facility
7 Licensing Act and amended the State Finance Act, the
8 Juvenile Court Act of 1987, the Unified Code of
9 Corrections, and the Private Correctional Facility
10 Moratorium Act. (I) Article 50 amended the WIC Vendor
11 Management Act, the Firearm Owners Identification Card
12 Act, the Juvenile Court Act of 1987, the Criminal Code
13 of 1961, the Wrongs to Children Act, and the Unified
14 Code of Corrections.

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

23 (iv) Child pornography is a vital concern to the
24 people of this State and the validity of future
25 prosecutions under the child pornography statute of
26 the Criminal Code of 1961 is in grave doubt.

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

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

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

24 (Source: P.A. 101-87, eff. 1-1-20; 102-567, eff. 1-1-22.)