

HB2647



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB2647

Introduced 2/21/2013, by Rep. Emily McAsey

SYNOPSIS AS INTRODUCED:

720 ILCS 5/11-20.1

from Ch. 38, par. 11-20.1

Amends the Criminal Code of 2012 concerning child pornography. Provides that the possession of each individual film, videotape, photograph, or other similar visual reproduction or depiction by computer in violation of the child pornography statute constitutes a single and separate violation.

LRB098 05661 RLC 35700 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

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 changing
5 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 or
12 she knows or reasonably should know to be under the age of
13 18 or any severely or profoundly intellectually disabled
14 person where such child or severely or profoundly
15 intellectually disabled person is:

16 (i) actually or by simulation engaged in any act of
17 sexual penetration or sexual conduct with any person or
18 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 severely or profoundly
22 intellectually disabled person and the mouth, anus, or
23 sex organs of another person or animal; or which

1 involves the mouth, anus or sex organs of the child or
2 severely or profoundly intellectually disabled person
3 and the sex organs of another person or animal; or

4 (iii) actually or by simulation engaged in any act
5 of masturbation; or

6 (iv) actually or by simulation portrayed as being
7 the object of, or otherwise engaged in, any act of lewd
8 fondling, touching, or caressing involving another
9 person or animal; or

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

12 (vi) actually or by simulation portrayed or
13 depicted as bound, fettered, or subject to sadistic,
14 masochistic, or sadomasochistic abuse in any sexual
15 context; or

16 (vii) depicted or portrayed in any pose, posture or
17 setting involving a lewd exhibition of the unclothed or
18 transparently clothed genitals, pubic area, buttocks,
19 or, if such person is female, a fully or partially
20 developed breast of the child or other person; or

21 (2) with the knowledge of the nature or content
22 thereof, reproduces, disseminates, offers to disseminate,
23 exhibits or possesses with intent to disseminate any film,
24 videotape, photograph or other similar visual reproduction
25 or depiction by computer of any child or severely or
26 profoundly intellectually disabled person whom the person

1 knows or reasonably should know to be under the age of 18
2 or to be a severely or profoundly intellectually disabled
3 person, engaged in any activity described in subparagraphs
4 (i) through (vii) of paragraph (1) of this subsection; or

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

13 (4) solicits, uses, persuades, induces, entices, or
14 coerces any child whom he or she knows or reasonably should
15 know to be under the age of 18 or a severely or profoundly
16 intellectually disabled person to appear in any stage play,
17 live presentation, film, videotape, photograph or other
18 similar visual reproduction or depiction by computer in
19 which the child or severely or profoundly intellectually
20 disabled person is or will be depicted, actually or by
21 simulation, in any act, pose or setting described in
22 subparagraphs (i) through (vii) of paragraph (1) of this
23 subsection; or

24 (5) is a parent, step-parent, legal guardian or other
25 person having care or custody of a child whom the person
26 knows or reasonably should know to be under the age of 18

1 or a severely or profoundly intellectually disabled person
2 and who knowingly permits, induces, promotes, or arranges
3 for such child or severely or profoundly intellectually
4 disabled person to appear in any stage play, live
5 performance, film, videotape, photograph or other similar
6 visual presentation, portrayal or simulation or depiction
7 by computer of any act or activity described in
8 subparagraphs (i) through (vii) of paragraph (1) of this
9 subsection; or

10 (6) with knowledge of the nature or content thereof,
11 possesses any film, videotape, photograph or other similar
12 visual reproduction or depiction by computer of any child
13 or severely or profoundly intellectually disabled person
14 whom the person knows or reasonably should know to be under
15 the age of 18 or to be a severely or profoundly
16 intellectually disabled person, engaged in any activity
17 described in subparagraphs (i) through (vii) of paragraph
18 (1) of this subsection; or

19 (7) solicits, or knowingly uses, persuades, induces,
20 entices, or coerces, a person to provide a child under the
21 age of 18 or a severely or profoundly intellectually
22 disabled person to appear in any videotape, photograph,
23 film, stage play, live presentation, or other similar
24 visual reproduction or depiction by computer in which the
25 child or severely or profoundly intellectually disabled
26 person will be depicted, actually or by simulation, in any

1 act, pose, or setting described in subparagraphs (i)
2 through (vii) of paragraph (1) of this subsection.

3 (a-5) The possession of each individual film, videotape,
4 photograph, or other similar visual reproduction or depiction
5 by computer in violation of this Section constitutes a single
6 and separate violation.

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

19 (1.5) Telecommunications carriers, commercial mobile
20 service providers, and providers of information services,
21 including, but not limited to, Internet service providers
22 and hosting service providers, are not liable under this
23 Section by virtue of the transmission, storage, or caching
24 of electronic communications or messages of others or by
25 virtue of the provision of other related
26 telecommunications, commercial mobile services, or

1 information services used by others in violation of this
2 Section.

3 (2) (Blank).

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

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

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

24 (6) Any violation of paragraph (1), (2), (3), (4), (5),
25 or (7) of subsection (a) that includes a child engaged in,
26 solicited for, depicted in, or posed in any act of sexual

1 penetration or bound, fettered, or subject to sadistic,
2 masochistic, or sadomasochistic abuse in a sexual context
3 shall be deemed a crime of violence.

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

1 a violation of paragraph (6) of subsection (a) is a Class 3
2 felony with a mandatory minimum fine of \$1000 and a maximum
3 fine of \$100,000. If the violation involves a film, videotape,
4 or other moving depiction, a violation of paragraph (6) of
5 subsection (a) is a Class 2 felony with a mandatory minimum
6 fine of \$1000 and a maximum fine of \$100,000.

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

1 than 9 years with a mandatory minimum fine of \$2,000 and a
2 maximum fine of \$100,000. Where the child depicted is under the
3 age of 13, a person who commits a violation of paragraph (6) of
4 subsection (a) where the defendant has previously been
5 convicted under the laws of this State or any other state of
6 the offense of child pornography, aggravated child
7 pornography, aggravated criminal sexual abuse, aggravated
8 criminal sexual assault, predatory criminal sexual assault of a
9 child, or any of the offenses formerly known as rape, deviate
10 sexual assault, indecent liberties with a child, or aggravated
11 indecent liberties with a child where the victim was under the
12 age of 18 years or an offense that is substantially equivalent
13 to those offenses, is guilty of a Class 1 felony with a
14 mandatory minimum fine of \$1,000 and a maximum fine of
15 \$100,000. The issue of whether the child depicted is under the
16 age of 13 is an element of the offense to be resolved by the
17 trier of fact.

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

23 (e) Any film, videotape, photograph or other similar visual
24 reproduction or depiction by computer which includes a child
25 under the age of 18 or a severely or profoundly intellectually
26 disabled person engaged in any activity described in

1 subparagraphs (i) through (vii) or paragraph 1 of subsection
2 (a), and any material or equipment used or intended for use in
3 photographing, filming, printing, producing, reproducing,
4 manufacturing, projecting, exhibiting, depiction by computer,
5 or disseminating such material shall be seized and forfeited in
6 the manner, method and procedure provided by Section 36-1 of
7 this Code for the seizure and forfeiture of vessels, vehicles
8 and aircraft.

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

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

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

24 (1) "Disseminate" means (i) to sell, distribute,
25 exchange or transfer possession, whether with or without
26 consideration or (ii) to make a depiction by computer

1 available for distribution or downloading through the
2 facilities of any telecommunications network or through
3 any other means of transferring computer programs or data
4 to a computer.

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

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

8 (4) "Depict by computer" means to generate or create,
9 or cause to be created or generated, a computer program or
10 data that, after being processed by a computer either alone
11 or in conjunction with one or more computer programs,
12 results in a visual depiction on a computer monitor,
13 screen, or display.

14 (5) "Depiction by computer" means a computer program or
15 data that, after being processed by a computer either alone
16 or in conjunction with one or more computer programs,
17 results in a visual depiction on a computer monitor,
18 screen, or display.

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

22 (7) For the purposes of this Section, "child
23 pornography" includes a film, videotape, photograph, or
24 other similar visual medium or reproduction or depiction by
25 computer that is, or appears to be, that of a person,
26 either in part, or in total, under the age of 18 or a

1 severely or profoundly intellectually disabled person,
2 regardless of the method by which the film, videotape,
3 photograph, or other similar visual medium or reproduction
4 or depiction by computer is created, adopted, or modified
5 to appear as such. "Child pornography" also includes a
6 film, videotape, photograph, or other similar visual
7 medium or reproduction or depiction by computer that is
8 advertised, promoted, presented, described, or distributed
9 in such a manner that conveys the impression that the film,
10 videotape, photograph, or other similar visual medium or
11 reproduction or depiction by computer is of a person under
12 the age of 18 or a severely or profoundly intellectually
13 disabled person.

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

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

16 (i) Section 50-5 of Public Act 88-680, effective
17 January 1, 1995, contained provisions amending the
18 child pornography statute, Section 11-20.1 of the
19 Criminal Code of 1961. Section 50-5 also contained
20 other provisions.

21 (ii) In addition, Public Act 88-680 was entitled
22 "AN ACT to create a Safe Neighborhoods Law". (A)
23 Article 5 was entitled JUVENILE JUSTICE and amended the
24 Juvenile Court Act of 1987. (B) Article 15 was entitled
25 GANGS and amended various provisions of the Criminal
26 Code of 1961 and the Unified Code of Corrections. (C)

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

22 (iii) On September 22, 1998, the Third District
23 Appellate Court in *People v. Dainty*, 701 N.E. 2d 118,
24 ruled that Public Act 88-680 violates the single
25 subject clause of the Illinois Constitution (Article
26 IV, Section 8 (d)) and was unconstitutional in its

1 entirety. As of the time this amendatory Act of 1999
2 was prepared, *People v. Dainty* was still subject to
3 appeal.

4 (iv) Child pornography is a vital concern to the
5 people of this State and the validity of future
6 prosecutions under the child pornography statute of
7 the Criminal Code of 1961 is in grave doubt.

8 (2) It is the purpose of this amendatory Act of 1999 to
9 prevent or minimize any problems relating to prosecutions
10 for child pornography that may result from challenges to
11 the constitutional validity of Public Act 88-680 by
12 re-enacting the Section relating to child pornography that
13 was included in Public Act 88-680.

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

24 (4) The re-enactment by this amendatory Act of 1999 of
25 Section 11-20.1 of the Criminal Code of 1961 relating to
26 child pornography that was amended by Public Act 88-680 is

1 not intended, and shall not be construed, to imply that
2 Public Act 88-680 is invalid or to limit or impair any
3 legal argument concerning whether those provisions were
4 substantially re-enacted by other Public Acts.

5 (Source: P.A. 96-292, eff. 1-1-10; 96-712, eff. 1-1-10;
6 96-1000, eff. 7-2-10; 96-1551, eff. 7-1-11; 97-157, eff.
7 1-1-12; 97-227, eff. 1-1-12; 97-995, eff. 1-1-13; 97-1109, eff.
8 1-1-13.)