

# HB0131



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB0131

Introduced 1/19/2007, by Rep. Ed Sullivan, Jr.

#### SYNOPSIS AS INTRODUCED:

720 ILCS 5/11-20.1

from Ch. 38, par. 11-20.1

Amends the Criminal Code of 1961. Provides that possession by a defendant of 100 or more items of child pornography is prima facie evidence that the defendant possessed those items with the intent to disseminate them.

LRB095 04009 RLC 24043 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 1961 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 the offense of 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 knows or reasonably should know to be under the age of 18  
13 or any severely or profoundly mentally retarded person  
14 where such child or severely or profoundly mentally  
15 retarded 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 mentally retarded person and the mouth, anus, or sex  
23 organs of another person or animal; or which involves

1 the mouth, anus or sex organs of the child or severely  
2 or profoundly mentally retarded person and the sex  
3 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 mentally retarded person whom the person knows

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

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

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

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

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

16 (7) solicits, uses, persuades, induces, entices, or  
17 coerces a person to provide a child under the age of 18 or  
18 a severely or profoundly mentally retarded person to appear  
19 in any videotape, photograph, film, stage play, live  
20 presentation, or other similar visual reproduction or  
21 depiction by computer in which the child or severely or  
22 profoundly mentally retarded person will be depicted,  
23 actually or by simulation, in any act, pose, or setting  
24 described in subparagraphs (i) through (vii) of paragraph  
25 (1) of this subsection.

26 (b) (1) It shall be an affirmative defense to a charge of

1 child pornography that the defendant reasonably believed,  
2 under all of the circumstances, that the child was 18 years  
3 of age or older or that the person was not a severely or  
4 profoundly mentally retarded person but only where, prior  
5 to the act or acts giving rise to a prosecution under this  
6 Section, he took some affirmative action or made a bonafide  
7 inquiry designed to ascertain whether the child was 18  
8 years of age or older or that the person was not a severely  
9 or profoundly mentally retarded person and his reliance  
10 upon the information so obtained was clearly reasonable.

11 (2) (Blank).

12 (3) The charge of child pornography shall not apply to  
13 the performance of official duties by law enforcement or  
14 prosecuting officers or persons employed by law  
15 enforcement or prosecuting agencies, court personnel or  
16 attorneys, nor to bonafide treatment or professional  
17 education programs conducted by licensed physicians,  
18 psychologists or social workers.

19 (4) Possession by the defendant of more than one of the  
20 same film, videotape or visual reproduction or depiction by  
21 computer in which child pornography is depicted shall raise  
22 a rebuttable presumption that the defendant possessed such  
23 materials with the intent to disseminate them.

24 (4.5) Possession by the defendant of 100 or more items  
25 depicting any child or severely or profoundly mentally  
26 retarded person whom the person knows or reasonably should

1       know to be under the age of 18 or to be a severely or  
2       profoundly mentally retarded person engaged in any  
3       activity described in subparagraphs (i) through (vii) of  
4       paragraph (1) of subsection (a) is prima facie evidence  
5       that the defendant possessed those items with the intent to  
6       disseminate those items.

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

15          (c) Violation of paragraph (1), (4), (5), or (7) of  
16      subsection (a) is a Class 1 felony with a mandatory minimum  
17      fine of \$2,000 and a maximum fine of \$100,000. Violation of  
18      paragraph (3) of subsection (a) is a Class 1 felony with a  
19      mandatory minimum fine of \$1500 and a maximum fine of \$100,000.  
20      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. Violation of paragraph (6) of subsection (a)  
23      is a Class 3 felony with a mandatory minimum fine of \$1000 and  
24      a maximum fine of \$100,000.

25          (d) If a person is convicted of a second or subsequent  
26      violation of this Section within 10 years of a prior

1 conviction, the court shall order a presentence psychiatric  
2 examination of the person. The examiner shall report to the  
3 court whether treatment of the person is necessary.

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

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

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

2 (1) "Disseminate" means (i) to sell, distribute,  
3 exchange or transfer possession, whether with or without  
4 consideration or (ii) to make a depiction by computer  
5 available for distribution or downloading through the  
6 facilities of any telecommunications network or through  
7 any other means of transferring computer programs or data  
8 to a computer.

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

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

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

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

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

26 (7) "Child" includes a film, videotape, photograph, or

1 other similar visual medium or reproduction or depiction by  
2 computer that is, or appears to be, that of a person,  
3 either in part, or in total, under the age of 18,  
4 regardless of the method by which the film, videotape,  
5 photograph, or other similar visual medium or reproduction  
6 or depiction by computer is created, adopted, or modified  
7 to appear as such. "Child" also includes a film, videotape,  
8 photograph, or other similar visual medium or reproduction  
9 or depiction by computer that is advertised, promoted,  
10 presented, described, or distributed in such a manner that  
11 conveys the impression that the film, videotape,  
12 photograph, or other similar visual medium or reproduction  
13 or depiction by computer is of a person under the age of  
14 18.

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

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

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

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

24 (ii) In addition, Public Act 88-680 was entitled  
25 "AN ACT to create a Safe Neighborhoods Law". (A)  
26 Article 5 was entitled JUVENILE JUSTICE and amended the

1 Juvenile Court Act of 1987. (B) Article 15 was entitled  
2 GANGS and amended various provisions of the Criminal  
3 Code of 1961 and the Unified Code of Corrections. (C)  
4 Article 20 was entitled ALCOHOL ABUSE and amended  
5 various provisions of the Illinois Vehicle Code. (D)  
6 Article 25 was entitled DRUG ABUSE and amended the  
7 Cannabis Control Act and the Illinois Controlled  
8 Substances Act. (E) Article 30 was entitled FIREARMS  
9 and amended the Criminal Code of 1961 and the Code of  
10 Criminal Procedure of 1963. (F) Article 35 amended the  
11 Criminal Code of 1961, the Rights of Crime Victims and  
12 Witnesses Act, and the Unified Code of Corrections. (G)  
13 Article 40 amended the Criminal Code of 1961 to  
14 increase the penalty for compelling organization  
15 membership of persons. (H) Article 45 created the  
16 Secure Residential Youth Care Facility Licensing Act  
17 and amended the State Finance Act, the Juvenile Court  
18 Act of 1987, the Unified Code of Corrections, and the  
19 Private Correctional Facility Moratorium Act. (I)  
20 Article 50 amended the WIC Vendor Management Act, the  
21 Firearm Owners Identification Card Act, the Juvenile  
22 Court Act of 1987, the Criminal Code of 1961, the  
23 Wrongs to Children Act, and the Unified Code of  
24 Corrections.

25 (iii) On September 22, 1998, the Third District  
26 Appellate Court in *People v. Dainty*, 701 N.E. 2d 118,

1 ruled that Public Act 88-680 violates the single  
2 subject clause of the Illinois Constitution (Article  
3 IV, Section 8 (d)) and was unconstitutional in its  
4 entirety. As of the time this amendatory Act of 1999  
5 was prepared, People v. Dainty was still subject to  
6 appeal.

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

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

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

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

8           (Source: P.A. 94-366, eff. 7-29-05.)