

1 AN ACT to amend certain Acts in relation to mentally
2 retarded persons.

3 Be it enacted by the People of the State of Illinois,
4 represented in the General Assembly:

5 Section 5. The Criminal Code of 1961 is amended by
6 changing Sections 2-10.1, 10-2, 10-5, 11-15.1, 11-19.1,
7 11-19.2, 11-20.1, 12-4.3, 12-14, and 12-16 as follows:

8 (720 ILCS 5/2-10.1) (from Ch. 38, par. 2-10.1)

9 Sec. 2-10.1. "~~Institutionalized~~ Severely or profoundly
10 mentally retarded person" means a person ~~who---is~~
11 ~~institutionalized-in--a--developmental--disability--facility,~~
12 ~~nursing--home-facility,-or-long-term-care-facility-and-either~~
13 (i) whose ~~the-person's~~ intelligence quotient does not exceed
14 40 or (ii) whose ~~the-person's~~ intelligence quotient does not
15 exceed 55 and who ~~the-person~~ suffers from significant mental
16 illness to the extent that the person's ability to exercise
17 rational judgment is impaired. In any proceeding in which the
18 defendant is charged with committing a violation of Section
19 10-2, 10-5, 11-15.1, 11-19.1, 11-19.2, 11-20.1, 12-4.3,
20 12-14, or 12-16 of this Code against a victim who is alleged
21 to be a ~~an-institutionalized~~ severely or profoundly mentally
22 retarded person, any findings concerning the victim's status
23 as a ~~an-institutionalized~~ severely or profoundly mentally
24 retarded person, made by a court after a judicial admission
25 hearing concerning the victim under Articles V and VI of
26 Chapter 4 of the Mental Health and Developmental Disabilities
27 Code shall be admissible.

28 (Source: P.A. 87-1198.)

29 (720 ILCS 5/10-2) (from Ch. 38, par. 10-2)

30 Sec. 10-2. Aggravated kidnaping.

1 (a) A kidnaper within the definition of paragraph (a) of
2 Section 10-1 is guilty of the offense of aggravated
3 kidnaping when he:

4 (1) Kidnaps for the purpose of obtaining ransom
5 from the person kidnaped or from any other person, or

6 (2) Takes as his victim a child under the age of 13
7 years, or a an-institutionalized severely or profoundly
8 mentally retarded person, or

9 (3) Inflicts great bodily harm, other than by the
10 discharge of a firearm, or commits another felony upon
11 his victim, or

12 (4) Wears a hood, robe or mask or conceals his
13 identity, or

14 (5) Commits the offense of kidnaping while armed
15 with a dangerous weapon, other than a firearm, as defined
16 in Section 33A-1 of the "Criminal Code of 1961", or

17 (6) Commits the offense of kidnaping while armed
18 with a firearm, or

19 (7) During the commission of the offense of
20 kidnaping, personally discharged a firearm, or

21 (8) During the commission of the offense of
22 kidnaping, personally discharged a firearm that
23 proximately caused great bodily harm, permanent
24 disability, permanent disfigurement, or death to another
25 person.

26 As used in this Section, "ransom" includes money, benefit
27 or other valuable thing or concession.

28 (b) Sentence. Aggravated kidnaping in violation of
29 paragraph (1), (2), (3), (4), or (5) of subsection (a) is a
30 Class X felony. A violation of subsection (a)(6) is a Class X
31 felony for which 15 years shall be added to the term of
32 imprisonment imposed by the court. A violation of subsection
33 (a)(7) is a Class X felony for which 20 years shall be added
34 to the term of imprisonment imposed by the court. A violation

1 of subsection (a)(8) is a Class X felony for which 25 years
2 or up to a term of natural life shall be added to the term of
3 imprisonment imposed by the court.

4 A person who is convicted of a second or subsequent
5 offense of aggravated kidnaping shall be sentenced to a term
6 of natural life imprisonment; provided, however, that a
7 sentence of natural life imprisonment shall not be imposed
8 under this Section unless the second or subsequent offense
9 was committed after conviction on the first offense.

10 (Source: P.A. 91-404, eff. 1-1-00.)

11 (720 ILCS 5/10-5) (from Ch. 38, par. 10-5)

12 Sec. 10-5. Child Abduction.

13 (a) For purposes of this Section, the following terms
14 shall have the following meanings:

15 (1) "Child" means a person under the age of 18 or a
16 ~~an--institutionalized~~ severely or profoundly mentally
17 retarded person at the time the alleged violation
18 occurred; and

19 (2) "Detains" means taking or retaining physical
20 custody of a child, whether or not the child resists or
21 objects; and

22 (3) "Lawful custodian" means a person or persons
23 granted legal custody of a child or entitled to physical
24 possession of a child pursuant to a court order. It is
25 presumed that, when the parties have never been married
26 to each other, the mother has legal custody of the child
27 unless a valid court order states otherwise. If an
28 adjudication of paternity has been completed and the
29 father has been assigned support obligations or
30 visitation rights, such a paternity order should, for the
31 purposes of this Section be considered a valid court
32 order granting custody to the mother.

33 (b) A person commits child abduction when he or she:

1 (1) Intentionally violates any terms of a valid
2 court order granting sole or joint custody, care or
3 possession to another, by concealing or detaining the
4 child or removing the child from the jurisdiction of the
5 court; or

6 (2) Intentionally violates a court order
7 prohibiting the person from concealing or detaining the
8 child or removing the child from the jurisdiction of the
9 court; or

10 (3) Intentionally conceals, detains or removes the
11 child without the consent of the mother or lawful
12 custodian of the child if the person is a putative father
13 and either: (A) the paternity of the child has not been
14 legally established or (B) the paternity of the child has
15 been legally established but no orders relating to
16 custody have been entered. However, notwithstanding the
17 presumption created by paragraph (3) of subsection (a), a
18 mother commits child abduction when she intentionally
19 conceals or removes a child, whom she has abandoned or
20 relinquished custody of, from an unadjudicated father who
21 has provided sole ongoing care and custody of the child
22 in her absence; or

23 (4) Intentionally conceals or removes the child
24 from a parent after filing a petition or being served
25 with process in an action affecting marriage or paternity
26 but prior to the issuance of a temporary or final order
27 determining custody; or

28 (5) At the expiration of visitation rights outside
29 the State, intentionally fails or refuses to return or
30 impedes the return of the child to the lawful custodian
31 in Illinois; or

32 (6) Being a parent of the child, and where the
33 parents of such child are or have been married and there
34 has been no court order of custody, conceals the child

1 for 15 days, and fails to make reasonable attempts within
 2 the 15 day period to notify the other parent as to the
 3 specific whereabouts of the child, including a means by
 4 which to contact such child, or to arrange reasonable
 5 visitation or contact with the child. It is not a
 6 violation of this Section for a person fleeing domestic
 7 violence to take the child with him or her to housing
 8 provided by a domestic violence program; or

9 (7) Being a parent of the child, and where the
 10 parents of the child are or have been married and there
 11 has been no court order of custody, conceals, detains, or
 12 removes the child with physical force or threat of
 13 physical force; or

14 (8) Conceals, detains, or removes the child for
 15 payment or promise of payment at the instruction of a
 16 person who has no legal right to custody; or

17 (9) Retains in this State for 30 days a child
 18 removed from another state without the consent of the
 19 lawful custodian or in violation of a valid court order
 20 of custody; or

21 (10) Intentionally lures or attempts to lure a
 22 child under the age of 16 into a motor vehicle, building,
 23 housetrailer, or dwelling place without the consent of
 24 the parent or lawful custodian of the child for other
 25 than a lawful purpose.

26 For the purposes of this subsection (b), paragraph (10),
 27 the luring or attempted luring of a child under the age of 16
 28 into a motor vehicle, building, housetrailer, or dwelling
 29 place without the consent of the parent or lawful custodian
 30 of the child shall be prima facie evidence of other than a
 31 lawful purpose.

32 (c) It shall be an affirmative defense that:

33 (1) The person had custody of the child pursuant to
 34 a court order granting legal custody or visitation rights

1 which existed at the time of the alleged violation; or

2 (2) The person had physical custody of the child
3 pursuant to a court order granting legal custody or
4 visitation rights and failed to return the child as a
5 result of circumstances beyond his or her control, and
6 the person notified and disclosed to the other parent or
7 legal custodian the specific whereabouts of the child and
8 a means by which such child can be contacted or made a
9 reasonable attempt to notify the other parent or lawful
10 custodian of the child of such circumstances and make
11 such disclosure within 24 hours after the visitation
12 period had expired and returned the child as soon as
13 possible; or

14 (3) The person was fleeing an incidence or pattern
15 of domestic violence; or

16 (4) The person lured or attempted to lure a child
17 under the age of 16 into a motor vehicle, building,
18 housetrailer, or dwelling place for a lawful purpose in
19 prosecutions under subsection (b), paragraph (10).

20 (d) A person convicted of child abduction under this
21 Section is guilty of a Class 4 felony. A person convicted of
22 a second or subsequent violation of paragraph (10) of
23 subsection (b) of this Section is guilty of a Class 3 felony.
24 It shall be a factor in aggravation for which a court may
25 impose a more severe sentence under Section 5-8-1 of the
26 Unified Code of Corrections, if upon sentencing the court
27 finds evidence of any of the following aggravating factors:

28 (1) that the defendant abused or neglected the
29 child following the concealment, detention or removal of
30 the child; or

31 (2) that the defendant inflicted or threatened to
32 inflict physical harm on a parent or lawful custodian of
33 the child or on the child with intent to cause such
34 parent or lawful custodian to discontinue criminal

1 prosecution of the defendant under this Section; or

2 (3) that the defendant demanded payment in exchange
3 for return of the child or demanded that he or she be
4 relieved of the financial or legal obligation to support
5 the child in exchange for return of the child; or

6 (4) that the defendant has previously been
7 convicted of child abduction; or

8 (5) that the defendant committed the abduction
9 while armed with a deadly weapon or the taking of the
10 child resulted in serious bodily injury to another; or

11 (6) that the defendant committed the abduction
12 while in a school, regardless of the time of day or time
13 of year; in a playground; on any conveyance owned,
14 leased, or contracted by a school to transport students
15 to or from school or a school related activity; on the
16 real property of a school; or on a public way within
17 1,000 feet of the real property comprising any school or
18 playground. For purposes of this paragraph (6),
19 "playground" means a piece of land owned or controlled by
20 a unit of local government that is designated by the unit
21 of local government for use solely or primarily for
22 children's recreation; and "school" means a public or
23 private elementary or secondary school, community
24 college, college, or university.

25 (e) The court may order the child to be returned to the
26 parent or lawful custodian from whom the child was concealed,
27 detained or removed. In addition to any sentence imposed,
28 the court may assess any reasonable expense incurred in
29 searching for or returning the child against any person
30 convicted of violating this Section.

31 (f) Nothing contained in this Section shall be construed
32 to limit the court's contempt power.

33 (g) Every law enforcement officer investigating an
34 alleged incident of child abduction shall make a written

1 police report of any bona fide allegation and the disposition
2 of such investigation. Every police report completed
3 pursuant to this Section shall be compiled and recorded
4 within the meaning of Section 5.1 of "An Act in relation to
5 criminal identification and investigation", approved July 2,
6 1931, as now or hereafter amended.

7 (h) Whenever a law enforcement officer has reasons to
8 believe a child abduction has occurred, he shall provide the
9 lawful custodian a summary of her or his rights under this
10 Act, including the procedures and relief available to her or
11 him.

12 (i) If during the course of an investigation under this
13 Section the child is found in the physical custody of the
14 defendant or another, the law enforcement officer shall
15 return the child to the parent or lawful custodian from whom
16 the child was concealed, detained or removed, unless there is
17 good cause for the law enforcement officer or the Department
18 of Children and Family Services to retain temporary
19 protective custody of the child pursuant to the Abused and
20 Neglected Child Reporting Act, as now or hereafter amended.

21 (Source: P.A. 90-494, eff. 1-1-98.)

22 (720 ILCS 5/11-15.1) (from Ch. 38, par. 11-15.1)

23 Sec. 11-15.1. Soliciting for a Juvenile Prostitute.

24 (a) Any person who violates any of the provisions of
25 Section 11-15(a) of this Act commits soliciting for a
26 juvenile prostitute where the prostitute for whom such person
27 is soliciting is under 16 years of age or is a an
28 institutionalized severely or profoundly mentally retarded
29 person.

30 (b) It is an affirmative defense to a charge of
31 soliciting for a juvenile prostitute that the accused
32 reasonably believed the person was of the age of 16 years or
33 over or was not a an-institutionalized severely or profoundly

1 mentally retarded person at the time of the act giving rise
2 to the charge.

3 (c) Sentence.

4 Soliciting for a juvenile prostitute is a Class 1 felony.
5 (Source: P.A. 85-1392.)

6 (720 ILCS 5/11-19.1) (from Ch. 38, par. 11-19.1)
7 Sec. 11-19.1. Juvenile Pimping.

8 (a) Any person who receives any money, property, token,
9 object, or article or anything of value from a prostitute
10 under 16 years of age or from a prostitute who is a an
11 institutionalized severely or profoundly mentally retarded
12 person, not for a lawful consideration, knowing it was earned
13 in whole or in part from the practice of prostitution,
14 commits juvenile pimping.

15 (b) It is an affirmative defense to a charge of juvenile
16 pimping that the accused reasonably believed the person was
17 of the age of 16 years or over or was not a an
18 institutionalized severely or profoundly mentally retarded
19 person at the time of the act giving rise to the charge.

20 (c) Sentence.

21 Juvenile pimping is a Class 1 felony.
22 (Source: P.A. 91-696, eff. 4-13-00.)

23 (720 ILCS 5/11-19.2) (from Ch. 38, par. 11-19.2)
24 Sec. 11-19.2. Exploitation of a child.

25 (A) A person commits exploitation of a child when he or
26 she confines a child under the age of 16 or a an
27 institutionalized severely or profoundly mentally retarded
28 person against his or her will by the infliction or threat of
29 imminent infliction of great bodily harm, permanent
30 disability or disfigurement or by administering to the child
31 or an--institutionalized severely or profoundly mentally
32 retarded person without his or her consent or by threat or

1 deception and for other than medical purposes, any alcoholic
2 intoxicant or a drug as defined in the Illinois Controlled
3 Substances Act or the Cannabis Control Act and:

4 (1) compels the child or an--institutionalized
5 severely or profoundly mentally retarded person to become
6 a prostitute; or

7 (2) arranges a situation in which the child or an
8 institutionalized severely or profoundly mentally
9 retarded person may practice prostitution; or

10 (3) receives any money, property, token, object, or
11 article or anything of value from the child or an
12 institutionalized severely or profoundly mentally
13 retarded person knowing it was obtained in whole or in
14 part from the practice of prostitution.

15 (B) For purposes of this Section, administering drugs,
16 as defined in subsection (A), or an alcoholic intoxicant to a
17 child under the age of 13 or a an-institutionalized severely
18 or profoundly mentally retarded person shall be deemed to be
19 without consent if such administering is done without the
20 consent of the parents or legal guardian.

21 (C) Exploitation of a child is a Class X felony.

22 (D) Any person convicted under this Section is subject
23 to the forfeiture provisions of Section 11-20.1A of this Act.
24 (Source: P.A. 91-357, eff. 7-29-99; 91-696, eff. 4-13-00.)

25 (720 ILCS 5/11-20.1) (from Ch. 38, par. 11-20.1)
26 Sec. 11-20.1. Child pornography.

27 (a) A person commits the offense of child pornography
28 who:

29 (1) films, videotapes, photographs, or otherwise
30 depicts or portrays by means of any similar visual medium
31 or reproduction or depicts by computer any child whom he
32 knows or reasonably should know to be under the age of 18
33 or any institutionalized severely or profoundly mentally

1 retarded person where such child or institutionalized
2 severely or profoundly mentally retarded person is:

3 (i) actually or by simulation engaged in any
4 act of sexual intercourse with any person or animal;
5 or

6 (ii) actually or by simulation engaged in any
7 act of sexual contact involving the sex organs of
8 the child or institutionalized severely or
9 profoundly mentally retarded person and the mouth,
10 anus, or sex organs of another person or animal; or
11 which involves the mouth, anus or sex organs of the
12 child or institutionalized severely or profoundly
13 mentally retarded person and the sex organs of
14 another person or animal; or

15 (iii) actually or by simulation engaged in any
16 act of masturbation; or

17 (iv) actually or by simulation portrayed as
18 being the object of, or otherwise engaged in, any
19 act of lewd fondling, touching, or caressing
20 involving another person or animal; or

21 (v) actually or by simulation engaged in any
22 act of excretion or urination within a sexual
23 context; or

24 (vi) actually or by simulation portrayed or
25 depicted as bound, fettered, or subject to sadistic,
26 masochistic, or sadomasochistic abuse in any sexual
27 context; or

28 (vii) depicted or portrayed in any pose,
29 posture or setting involving a lewd exhibition of
30 the unclothed genitals, pubic area, buttocks, or, if
31 such person is female, a fully or partially
32 developed breast of the child or other person; or

33 (2) with the knowledge of the nature or content
34 thereof, reproduces, disseminates, offers to disseminate,

1 exhibits or possesses with intent to disseminate any
2 film, videotape, photograph or other similar visual
3 reproduction or depiction by computer of any child or
4 institutionalized severely or profoundly mentally
5 retarded person whom the person knows or reasonably
6 should know to be under the age of 18 or to be a an
7 institutionalized severely or profoundly mentally
8 retarded person, engaged in any activity described in
9 subparagraphs (i) through (vii) of paragraph (1) of this
10 subsection; or

11 (3) with knowledge of the subject matter or theme
12 thereof, produces any stage play, live performance, film,
13 videotape or other similar visual portrayal or depiction
14 by computer which includes a child whom the person knows
15 or reasonably should know to be under the age of 18 or a
16 an--institutionalized severely or profoundly mentally
17 retarded person engaged in any activity described in
18 subparagraphs (i) through (vii) of paragraph (1) of this
19 subsection; or

20 (4) solicits, uses, persuades, induces, entices, or
21 coerces any child whom he knows or reasonably should know
22 to be under the age of 18 or a an-institutionalized
23 severely or profoundly mentally retarded person to appear
24 in any stage play, live presentation, film, videotape,
25 photograph or other similar visual reproduction or
26 depiction by computer in which the child or
27 institutionalized severely or profoundly mentally
28 retarded person is or will be depicted, actually or by
29 simulation, in any act, pose or setting described in
30 subparagraphs (i) through (vii) of paragraph (1) of this
31 subsection; or

32 (5) is a parent, step-parent, legal guardian or
33 other person having care or custody of a child whom the
34 person knows or reasonably should know to be under the

1 age of 18 or a ~~an--institutionalized~~ severely or
 2 profoundly mentally retarded person and who knowingly
 3 permits, induces, promotes, or arranges for such child or
 4 ~~institutionalized~~ severely or profoundly mentally
 5 retarded person to appear in any stage play, live
 6 performance, film, videotape, photograph or other similar
 7 visual presentation, portrayal or simulation or depiction
 8 by computer of any act or activity described in
 9 subparagraphs (i) through (vii) of paragraph (1) of this
 10 subsection; or

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

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

32 (b) (1) It shall be an affirmative defense to a charge
 33 of child pornography that the defendant reasonably believed,
 34 under all of the circumstances, that the child was 18 years

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

10 (2) (Blank).

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

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

23 (5) The charge of child pornography does not apply
24 to a person who does not voluntarily possess a film,
25 videotape, or visual reproduction or depiction by
26 computer in which child pornography is depicted.
27 Possession is voluntary if the defendant knowingly
28 procures or receives a film, videotape, or visual
29 reproduction or depiction for a sufficient time to be
30 able to terminate his or her possession.

31 (c) Violation of paragraph (1), (4), (5), or (7) of
32 subsection (a) is a Class 1 felony with a mandatory minimum
33 fine of \$2,000 and a maximum fine of \$100,000. Violation of
34 paragraph (3) of subsection (a) is a Class 1 felony with a

1 mandatory minimum fine of \$1500 and a maximum fine of
2 \$100,000. Violation of paragraph (2) of subsection (a) is a
3 Class 1 felony with a mandatory minimum fine of \$1000 and a
4 maximum fine of \$100,000. Violation of paragraph (6) of
5 subsection (a) is a Class 3 felony with a mandatory minimum
6 fine of \$1000 and a maximum fine of \$100,000.

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

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

24 (e-5) Upon the conclusion of a case brought under this
25 Section, the court shall seal all evidence depicting a victim
26 or witness that is sexually explicit. The evidence may be
27 unsealed and viewed, on a motion of the party seeking to
28 unseal and view the evidence, only for good cause shown and
29 in the discretion of the court. The motion must expressly
30 set forth the purpose for viewing the material. The State's
31 attorney and the victim, if possible, shall be provided
32 reasonable notice of the hearing on the motion to unseal the
33 evidence. Any person entitled to notice of a hearing under
34 this subsection (e-5) may 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
12 copy;

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

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

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

27 (7) "Child" includes a film, videotape, photograph,
28 or other similar visual medium or reproduction or
29 depiction by computer that is, or appears to be, that of
30 a person, either in part, or in total, under the age of
31 18, regardless of the method by which the film,
32 videotape, photograph, or other similar visual medium or
33 reproduction or depiction by computer is created,
34 adopted, or modified to appear as such. "Child" also

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

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

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

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

15 (ii) In addition, Public Act 88-680 was
16 entitled "AN ACT to create a Safe Neighborhoods
17 Law". (A) Article 5 was entitled JUVENILE JUSTICE
18 and amended the Juvenile Court Act of 1987. (B)
19 Article 15 was entitled GANGS and amended various
20 provisions of the Criminal Code of 1961 and the
21 Unified Code of Corrections. (C) Article 20 was
22 entitled ALCOHOL ABUSE and amended various
23 provisions of the Illinois Vehicle Code. (D)
24 Article 25 was entitled DRUG ABUSE and amended the
25 Cannabis Control Act and the Illinois Controlled
26 Substances Act. (E) Article 30 was entitled FIREARMS
27 and amended the Criminal Code of 1961 and the Code
28 of Criminal Procedure of 1963. (F) Article 35
29 amended the Criminal Code of 1961, the Rights of
30 Crime Victims and Witnesses Act, and the Unified
31 Code of Corrections. (G) Article 40 amended the
32 Criminal Code of 1961 to increase the penalty for
33 compelling organization membership of persons. (H)
34 Article 45 created the Secure Residential Youth Care

1 Facility Licensing Act and amended the State Finance
2 Act, the Juvenile Court Act of 1987, the Unified
3 Code of Corrections, and the Private Correctional
4 Facility Moratorium Act. (I) Article 50 amended the
5 WIC Vendor Management Act, the Firearm Owners
6 Identification Card Act, the Juvenile Court Act of
7 1987, the Criminal Code of 1961, the Wrongs to
8 Children Act, and the Unified Code of Corrections.

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

17 (iv) Child pornography is a vital concern to
18 the people of this State and the validity of future
19 prosecutions under the child pornography statute of
20 the Criminal Code of 1961 is in grave doubt.

21 (2) It is the purpose of this amendatory Act of
22 1999 to prevent or minimize any problems relating to
23 prosecutions for child pornography that may result from
24 challenges to the constitutional validity of Public Act
25 88-680 by re-enacting the Section relating to child
26 pornography that was included in Public Act 88-680.

27 (3) This amendatory Act of 1999 re-enacts Section
28 11-20.1 of the Criminal Code of 1961, as it has been
29 amended. This re-enactment is intended to remove any
30 question as to the validity or content of that Section;
31 it is not intended to supersede any other Public Act that
32 amends the text of the Section as set forth in this
33 amendatory Act of 1999. The material is shown as
34 existing text (i.e., without underscoring) because, as

1 of the time this amendatory Act of 1999 was prepared,
2 People v. Dainty was subject to appeal to the Illinois
3 Supreme Court.

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

12 (Source: P.A. 90-68, eff. 7-8-97; 90-678, eff. 7-31-98;
13 90-786, eff. 1-1-99; 91-54, eff. 6-30-99; 91-229, eff.
14 1-1-00; 91-357, eff. 7-29-99; revised 8-30-99.)

15 (720 ILCS 5/12-4.3) (from Ch. 38, par. 12-4.3)

16 Sec. 12-4.3. Aggravated battery of a child.

17 (a) Any person of the age 18 years and upwards who
18 intentionally or knowingly, and without legal justification
19 and by any means, causes great bodily harm or permanent
20 disability or disfigurement to any child under the age of 13
21 years or to any institutionalized severely or profoundly
22 mentally retarded person, commits the offense of aggravated
23 battery of a child.

24 (b) Aggravated battery of a child is a Class X felony,
25 except that:

26 (1) if the person committed the offense while armed
27 with a firearm, 15 years shall be added to the term of
28 imprisonment imposed by the court;

29 (2) if, during the commission of the offense, the
30 person personally discharged a firearm, 20 years shall be
31 added to the term of imprisonment imposed by the court;

32 (3) if, during the commission of the offense, the
33 person personally discharged a firearm that proximately

1 caused great bodily harm, permanent disability, permanent
 2 disfigurement, or death to another person, 25 years or up
 3 to a term of natural life shall be added to the term of
 4 imprisonment imposed by the court.

5 (Source: P.A. 91-357, eff. 7-29-99; 91-404, eff. 1-1-00.)

6 (720 ILCS 5/12-14) (from Ch. 38, par. 12-14)

7 Sec. 12-14. Aggravated Criminal Sexual Assault.

8 (a) The accused commits aggravated criminal sexual
 9 assault if he or she commits criminal sexual assault and any
 10 of the following aggravating circumstances existed during, or
 11 for the purposes of paragraph (7) of this subsection (a) as
 12 part of the same course of conduct as, the commission of the
 13 offense:

14 (1) the accused displayed, threatened to use, or
 15 used a dangerous weapon, other than a firearm, or any
 16 object fashioned or utilized in such a manner as to lead
 17 the victim under the circumstances reasonably to believe
 18 it to be a dangerous weapon; or

19 (2) the accused caused bodily harm, except as
 20 provided in subsection (a)(10), to the victim; or

21 (3) the accused acted in such a manner as to
 22 threaten or endanger the life of the victim or any other
 23 person; or

24 (4) the criminal sexual assault was perpetrated
 25 during the course of the commission or attempted
 26 commission of any other felony by the accused; or

27 (5) the victim was 60 years of age or over when the
 28 offense was committed; or

29 (6) the victim was a physically handicapped person;
 30 or

31 (7) the accused delivered (by injection,
 32 inhalation, ingestion, transfer of possession, or any
 33 other means) to the victim without his or her consent, or

1 by threat or deception, and for other than medical
2 purposes, any controlled substance; or

3 (8) the accused was armed with a firearm; or

4 (9) the accused personally discharged a firearm
5 during the commission of the offense; or

6 (10) the accused, during the commission of the
7 offense, personally discharged a firearm that proximately
8 caused great bodily harm, permanent disability, permanent
9 disfigurement, or death to another person.

10 (b) The accused commits aggravated criminal sexual
11 assault if the accused was under 17 years of age and (i)
12 commits an act of sexual penetration with a victim who was
13 under 9 years of age when the act was committed; or (ii)
14 commits an act of sexual penetration with a victim who was at
15 least 9 years of age but under 13 years of age when the act
16 was committed and the accused used force or threat of force
17 to commit the act.

18 (c) The accused commits aggravated criminal sexual
19 assault if he or she commits an act of sexual penetration
20 with a victim who was a ~~an-institutionalized~~ severely or
21 profoundly mentally retarded person at the time the act was
22 committed.

23 (d) Sentence.

24 (1) Aggravated criminal sexual assault in violation
25 of paragraph (1), (2), (3), (4), (5), (6), or (7) of
26 subsection (a) is a Class X felony. A violation of
27 subsection (a)(8) is a Class X felony for which 15 years
28 shall be added to the term of imprisonment imposed by the
29 court. A violation of subsection (a)(9) is a Class X
30 felony for which 20 years shall be added to the term of
31 imprisonment imposed by the court. A violation of
32 subsection (a)(10) is a Class X felony for which 25 years
33 or up to a term of natural life imprisonment shall be
34 added to the term of imprisonment imposed by the court.

1 (2) A person who is convicted of a second or
2 subsequent offense of aggravated criminal sexual assault,
3 or who is convicted of the offense of aggravated criminal
4 sexual assault after having previously been convicted of
5 the offense of criminal sexual assault or the offense of
6 predatory criminal sexual assault of a child, or who is
7 convicted of the offense of aggravated criminal sexual
8 assault after having previously been convicted under the
9 laws of this or any other state of an offense that is
10 substantially equivalent to the offense of criminal
11 sexual assault, the offense of aggravated criminal sexual
12 assault or the offense of predatory criminal sexual
13 assault of a child, shall be sentenced to a term of
14 natural life imprisonment. The commission of the second
15 or subsequent offense is required to have been after the
16 initial conviction for this paragraph (2) to apply.

17 (Source: P.A. 90-396, eff. 1-1-98; 90-735, eff. 8-11-98;
18 91-404, eff. 1-1-00.)

19 (720 ILCS 5/12-16) (from Ch. 38, par. 12-16)

20 Sec. 12-16. Aggravated Criminal Sexual Abuse.

21 (a) The accused commits aggravated criminal sexual abuse
22 if he or she commits criminal sexual abuse as defined in
23 subsection (a) of Section 12-15 of this Code and any of the
24 following aggravating circumstances existed during, or for
25 the purposes of paragraph (7) of this subsection (a) as part
26 of the same course of conduct as, the commission of the
27 offense:

28 (1) the accused displayed, threatened to use or
29 used a dangerous weapon or any object fashioned or
30 utilized in such a manner as to lead the victim under the
31 circumstances reasonably to believe it to be a dangerous
32 weapon; or

33 (2) the accused caused bodily harm to the victim;

1 or

2 (3) the victim was 60 years of age or over when the
3 offense was committed; or

4 (4) the victim was a physically handicapped person;
5 or

6 (5) the accused acted in such a manner as to
7 threaten or endanger the life of the victim or any other
8 person; or

9 (6) the criminal sexual abuse was perpetrated
10 during the course of the commission or attempted
11 commission of any other felony by the accused; or

12 (7) the accused delivered (by injection,
13 inhalation, ingestion, transfer of possession, or any
14 other means) to the victim without his or her consent, or
15 by threat or deception, and for other than medical
16 purposes, any controlled substance.

17 (b) The accused commits aggravated criminal sexual abuse
18 if he or she commits an act of sexual conduct with a victim
19 who was under 18 years of age when the act was committed and
20 the accused was a family member.

21 (c) The accused commits aggravated criminal sexual abuse
22 if:

23 (1) the accused was 17 years of age or over and (i)
24 commits an act of sexual conduct with a victim who was
25 under 13 years of age when the act was committed; or (ii)
26 commits an act of sexual conduct with a victim who was at
27 least 13 years of age but under 17 years of age when the
28 act was committed and the accused used force or threat of
29 force to commit the act; or

30 (2) the accused was under 17 years of age and (i)
31 commits an act of sexual conduct with a victim who was
32 under 9 years of age when the act was committed; or (ii)
33 commits an act of sexual conduct with a victim who was at
34 least 9 years of age but under 17 years of age when the

1 act was committed and the accused used force or threat of
2 force to commit the act.

3 (d) The accused commits aggravated criminal sexual abuse
4 if he or she commits an act of sexual penetration or sexual
5 conduct with a victim who was at least 13 years of age but
6 under 17 years of age and the accused was at least 5 years
7 older than the victim.

8 (e) The accused commits aggravated criminal sexual abuse
9 if he or she commits an act of sexual conduct with a victim
10 who was a an--institutionalized severely or profoundly
11 mentally retarded person at the time the act was committed.

12 (f) The accused commits aggravated criminal sexual abuse
13 if he or she commits an act of sexual conduct with a victim
14 who was at least 13 years of age but under 18 years of age
15 when the act was committed and the accused was 17 years of
16 age or over and held a position of trust, authority or
17 supervision in relation to the victim.

18 (g) Sentence. Aggravated criminal sexual abuse is a
19 Class 2 felony.

20 (Source: P.A. 89-586, eff. 7-31-96; 90-735, eff. 8-11-98.)

21 Section 10. The Code of Criminal Procedure of 1963 is
22 amended by changing Sections 106B-5 and 115-10 as follows:

23 (725 ILCS 5/106B-5)

24 Sec. 106B-5. Testimony by a victim who is a child or a
25 severely or profoundly mentally retarded person vietim.

26 (a) In a proceeding in the prosecution of an offense of
27 criminal sexual assault, predatory criminal sexual assault of
28 a child, aggravated criminal sexual assault, criminal sexual
29 abuse, or aggravated criminal sexual abuse, a court may order
30 that the testimony of a victim who is a child vietim under
31 the age of 18 years or a severely or profoundly mentally
32 retarded person be taken outside the courtroom and shown in

1 the courtroom by means of a closed circuit television if:

2 (1) the testimony is taken during the proceeding;
3 and

4 (2) the judge determines that testimony by the
5 child victim or the severely or profoundly mentally
6 retarded victim in the courtroom will result in the child
7 or severely or profoundly mentally retarded person
8 suffering serious emotional distress such that the child
9 or severely or profoundly mentally retarded person cannot
10 reasonably communicate or that the child or severely or
11 profoundly mentally retarded person will suffer severe
12 emotional distress that is likely to cause the child or
13 severely or profoundly mentally retarded person to suffer
14 severe adverse effects.

15 (b) Only the prosecuting attorney, the attorney for the
16 defendant, and the judge may question the child or severely
17 or profoundly mentally retarded person.

18 (c) The operators of the closed circuit television shall
19 make every effort to be unobtrusive.

20 (d) Only the following persons may be in the room with
21 the child or severely or profoundly mentally retarded person
22 when the child or severely or profoundly mentally retarded
23 person testifies by closed circuit television:

- 24 (1) the prosecuting attorney;
- 25 (2) the attorney for the defendant;
- 26 (3) the judge;
- 27 (4) the operators of the closed circuit television
- 28 equipment; and

29 (5) any person or persons whose presence, in the
30 opinion of the court, contributes to the well-being of
31 the child or severely or profoundly mentally retarded
32 person, including a person who has dealt with the child
33 in a therapeutic setting concerning the abuse, a parent
34 or guardian of the child or severely or profoundly

1 mentally retarded person, and court security personnel.

2 (e) During the child's or severely or profoundly
3 mentally retarded person's testimony by closed circuit
4 television, the defendant shall be in the courtroom and shall
5 not communicate with the jury if the cause is being heard
6 before a jury.

7 (f) The defendant shall be allowed to communicate with
8 the persons in the room where the child or severely or
9 profoundly mentally retarded person is testifying by any
10 appropriate electronic method.

11 (g) The provisions of this Section do not apply if the
12 defendant represents himself pro se.

13 (h) This Section may not be interpreted to preclude, for
14 purposes of identification of a defendant, the presence of
15 both the victim and the defendant in the courtroom at the
16 same time.

17 (i) This Section applies to prosecutions pending on or
18 commenced on or after the effective date of this amendatory
19 Act of 1994.

20 (Source: P.A. 88-674, eff. 12-14-94; 89-428, eff. 12-13-95;
21 89-462, eff. 5-29-96.)

22 (725 ILCS 5/115-10) (from Ch. 38, par. 115-10)

23 Sec. 115-10. Certain hearsay exceptions.

24 (a) In a prosecution for a physical or sexual act
25 perpetrated upon or against a child under the age of 13, or a
26 person who was a an-institutionalized severely or profoundly
27 mentally retarded person as defined in Section 2-10.1 of the
28 Criminal Code of 1961 at the time the act was committed,
29 including but not limited to prosecutions for violations of
30 Sections 12-13 through 12-16 of the Criminal Code of 1961 and
31 prosecutions for violations of Sections 10-1, 10-2, 10-3,
32 10-3.1, 10-4, 10-5, 10-6, 10-7, 11-6, 11-9, 11-11, 11-15.1,
33 11-17.1, 11-18.1, 11-19.1, 11-19.2, 11-20.1, 11-21, 12-1,

1 12-2, 12-3, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.7,
 2 12-5, 12-6, 12-6.1, 12-7.1, 12-7.3, 12-7.4, 12-10, 12-11,
 3 12-21.5, 12-21.6 and 12-32 of the Criminal Code of 1961, the
 4 following evidence shall be admitted as an exception to the
 5 hearsay rule:

6 (1) testimony by the victim of an out of court
 7 statement made by the victim that he or she complained of
 8 such act to another; and

9 (2) testimony of an out of court statement made by
 10 the victim describing any complaint of such act or matter
 11 or detail pertaining to any act which is an element of an
 12 offense which is the subject of a prosecution for a
 13 sexual or physical act against that victim.

14 (b) Such testimony shall only be admitted if:

15 (1) The court finds in a hearing conducted outside
 16 the presence of the jury that the time, content, and
 17 circumstances of the statement provide sufficient
 18 safeguards of reliability; and

19 (2) The child or institutionalized severely or
 20 profoundly mentally retarded person either:

21 (A) testifies at the proceeding; or

22 (B) is unavailable as a witness and there is
 23 corroborative evidence of the act which is the
 24 subject of the statement; and

25 (3) In a case involving an offense perpetrated
 26 against a child under the age of 13, the out of court
 27 statement was made before the victim attained 13 years of
 28 age or within 3 months after the commission of the
 29 offense, whichever occurs later, but the statement may be
 30 admitted regardless of the age of the victim at the time
 31 of the proceeding.

32 (c) If a statement is admitted pursuant to this Section,
 33 the court shall instruct the jury that it is for the jury to
 34 determine the weight and credibility to be given the

1 statement and that, in making the determination, it shall
2 consider the age and maturity of the child, or the
3 intellectual capabilities of the institutionalized severely
4 or profoundly mentally retarded person, the nature of the
5 statement, the circumstances under which the statement was
6 made, and any other relevant factor.

7 (d) The proponent of the statement shall give the
8 adverse party reasonable notice of his intention to offer the
9 statement and the particulars of the statement.

10 (e) Statements described in paragraphs (1) and (2) of
11 subsection (a) shall not be excluded on the basis that they
12 were obtained as a result of interviews conducted pursuant to
13 a protocol adopted by a Child Advocacy Advisory Board as set
14 forth in subsections (c), (d), and (e) of Section 3 of the
15 Children's Advocacy Center Act or that an interviewer or
16 witness to the interview was or is an employee, agent, or
17 investigator of a State's Attorney's office.

18 (Source: P.A. 90-656, eff. 7-30-98; 90-786, eff. 1-1-99;
19 91-357, eff. 7-29-99.)