

1 AN ACT in relation to 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
5 changing Sections 11-20-1 and 33D-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
9 who:

10 (1) films, videotapes, photographs, or otherwise
11 depicts or portrays by means of any similar visual medium
12 or reproduction or depicts by computer any child whom he
13 knows or reasonably should know to be under the age of 18
14 or any severely or profoundly mentally retarded person
15 where such child or severely or profoundly mentally
16 retarded person is:

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

20 (ii) actually or by simulation engaged in any
21 act of sexual penetration or sexual conduct ~~contact~~
22 involving the sex organs of the child or severely or
23 profoundly mentally retarded person and the mouth,
24 anus, or sex organs of another person or animal; or
25 which involves the mouth, anus or sex organs of the
26 child or severely or profoundly mentally retarded
27 person and the sex organs of another person or
28 animal; or

29 (iii) actually or by simulation engaged in any
30 act of masturbation; or

31 (iv) actually or by simulation portrayed as

1 being the object of, or otherwise engaged in, any
2 act of lewd fondling, touching, or caressing
3 involving another person or animal; or

4 (v) actually or by simulation engaged in any
5 act of excretion or urination within a sexual
6 context; or

7 (vi) actually or by simulation portrayed or
8 depicted as bound, fettered, or subject to sadistic,
9 masochistic, or sadomasochistic abuse in any sexual
10 context; or

11 (vii) depicted or portrayed in any pose,
12 posture or setting involving a lewd exhibition of
13 the unclothed genitals, pubic area, buttocks, or, if
14 such person is female, a fully or partially
15 developed breast of the child or other person; or

16 (2) with the knowledge of the nature or content
17 thereof, reproduces, disseminates, offers to disseminate,
18 exhibits or possesses with intent to disseminate any
19 film, videotape, photograph or other similar visual
20 reproduction or depiction by computer of any child or
21 severely or profoundly mentally retarded person whom the
22 person knows or reasonably should know to be under the
23 age of 18 or to be a severely or profoundly mentally
24 retarded person, engaged in any activity described in
25 subparagraphs (i) through (vii) of paragraph (1) of this
26 subsection; or

27 (3) with knowledge of the subject matter or theme
28 thereof, produces any stage play, live performance, film,
29 videotape or other similar visual portrayal or depiction
30 by computer which includes a child whom the person knows
31 or reasonably should know to be under the age of 18 or a
32 severely or profoundly mentally retarded person engaged
33 in any activity described in subparagraphs (i) through
34 (vii) of paragraph (1) of this subsection; or

1 (4) solicits, uses, persuades, induces, entices, or
2 coerces any child whom he knows or reasonably should know
3 to be under the age of 18 or a severely or profoundly
4 mentally retarded person to appear in any stage play,
5 live presentation, film, videotape, photograph or other
6 similar visual reproduction or depiction by computer in
7 which the child or severely or profoundly mentally
8 retarded person is or will be depicted, actually or by
9 simulation, in any act, pose or setting described in
10 subparagraphs (i) through (vii) of paragraph (1) of this
11 subsection; or

12 (5) is a parent, step-parent, legal guardian or
13 other person having care or custody of a child whom the
14 person knows or reasonably should know to be under the
15 age of 18 or a severely or profoundly mentally retarded
16 person and who knowingly permits, induces, promotes, or
17 arranges for such child or severely or profoundly
18 mentally retarded person to appear in any stage play,
19 live performance, film, videotape, photograph or other
20 similar visual presentation, portrayal or simulation or
21 depiction by computer of any act or activity described in
22 subparagraphs (i) through (vii) of paragraph (1) of this
23 subsection; or

24 (6) with knowledge of the nature or content
25 thereof, possesses any film, videotape, photograph or
26 other similar visual reproduction or depiction by
27 computer of any child or severely or profoundly mentally
28 retarded person whom the person knows or reasonably
29 should know to be under the age of 18 or to be a severely
30 or profoundly mentally retarded person, engaged in any
31 activity described in subparagraphs (i) through (vii) of
32 paragraph (1) of this subsection; or

33 (7) solicits, uses, persuades, induces, entices, or
34 coerces a person to provide a child under the age of 18

1 or a severely or profoundly mentally retarded person to
2 appear in any videotape, photograph, film, stage play,
3 live presentation, or other similar visual reproduction
4 or depiction by computer in which the child or severely
5 or profoundly mentally retarded person will be depicted,
6 actually or by simulation, in any act, pose, or setting
7 described in subparagraphs (i) through (vii) of paragraph
8 (1) of this subsection.

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

20 (2) (Blank).

21 (3) The charge of child pornography shall not apply
22 to the performance of official duties by law enforcement
23 or prosecuting officers, court personnel or attorneys,
24 nor to bonafide treatment or professional education
25 programs conducted by licensed physicians, psychologists
26 or social workers.

27 (4) Possession by the defendant of more than one of
28 the same film, videotape or visual reproduction or
29 depiction by computer in which child pornography is
30 depicted shall raise a rebuttable presumption that the
31 defendant possessed such materials with the intent to
32 disseminate them.

33 (5) The charge of child pornography does not apply
34 to a person who does not voluntarily possess a film,

1 videotape, or visual reproduction or depiction by
2 computer in which child pornography is depicted.
3 Possession is voluntary if the defendant knowingly
4 procures or receives a film, videotape, or visual
5 reproduction or depiction for a sufficient time to be
6 able to terminate his or her possession.

7 (c) Violation of paragraph (1), (4), (5), or (7) of
8 subsection (a) is a Class 1 felony with a mandatory minimum
9 fine of \$2,000 and a maximum fine of \$100,000. Violation of
10 paragraph (3) of subsection (a) is a Class 1 felony with a
11 mandatory minimum fine of \$1500 and a maximum fine of
12 \$100,000. Violation of paragraph (2) of subsection (a) is a
13 Class 1 felony with a mandatory minimum fine of \$1000 and a
14 maximum fine of \$100,000. Violation of paragraph (6) of
15 subsection (a) is a Class 3 felony with a mandatory minimum
16 fine of \$1000 and a maximum fine of \$100,000.

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

22 (e) Any film, videotape, photograph or other similar
23 visual reproduction or depiction by computer which includes a
24 child under the age of 18 or a severely or profoundly
25 mentally retarded person engaged in any activity described in
26 subparagraphs (i) through (vii) or paragraph 1 of subsection
27 (a), and any material or equipment used or intended for use
28 in photographing, filming, printing, producing, reproducing,
29 manufacturing, projecting, exhibiting, depiction by computer,
30 or disseminating such material shall be seized and forfeited
31 in the manner, method and procedure provided by Section 36-1
32 of this Code for the seizure and forfeiture of vessels,
33 vehicles and aircraft.

34 (e-5) Upon the conclusion of a case brought under this

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

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

12 (1) "Disseminate" means (i) to sell, distribute,
13 exchange or transfer possession, whether with or without
14 consideration or (ii) to make a depiction by computer
15 available for distribution or downloading through the
16 facilities of any telecommunications network or through
17 any other means of transferring computer programs or data
18 to a computer;

19 (2) "Produce" means to direct, promote, advertise,
20 publish, manufacture, issue, present or show;

21 (3) "Reproduce" means to make a duplication or
22 copy;

23 (4) "Depict by computer" means to generate or
24 create, or cause to be created or generated, a computer
25 program or data that, after being processed by a computer
26 either alone or in conjunction with one or more computer
27 programs, results in a visual depiction on a computer
28 monitor, screen, or display.

29 (5) "Depiction by computer" means a computer
30 program or data that, after being processed by a computer
31 either alone or in conjunction with one or more computer
32 programs, results in a visual depiction on a computer
33 monitor, screen, or display.

34 (6) "Computer", "computer program", and "data" have

1 the meanings ascribed to them in Section 16D-2 of this
2 Code.

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

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

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

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

23 (i) Section 50-5 of Public Act 88-680,
24 effective January 1, 1995, contained provisions
25 amending the child pornography statute, Section
26 11-20.1 of the Criminal Code of 1961. Section 50-5
27 also contained other provisions.

28 (ii) In addition, Public Act 88-680 was
29 entitled "AN ACT to create a Safe Neighborhoods
30 Law". (A) Article 5 was entitled JUVENILE JUSTICE
31 and amended the Juvenile Court Act of 1987. (B)
32 Article 15 was entitled GANGS and amended various
33 provisions of the Criminal Code of 1961 and the
34 Unified Code of Corrections. (C) Article 20 was

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

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

30 (iv) Child pornography is a vital concern to
31 the people of this State and the validity of future
32 prosecutions under the child pornography statute of
33 the Criminal Code of 1961 is in grave doubt.

34 (2) It is the purpose of this amendatory Act of

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

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

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

25 (Source: P.A. 91-54, eff. 6-30-99; 91-229, eff. 1-1-00;
 26 91-357, eff. 7-29-99; 92-16, eff. 6-28-01; 92-434, eff.
 27 1-1-02.)

28 (720 ILCS 5/33D-1) (from Ch. 38, par. 33D-1)
 29 Sec. 33D-1. (a) Contributing to the criminal delinquency
 30 of a juvenile. Any person of the age of 17 ~~21~~ years and
 31 upwards, who with the intent to promote or facilitate the
 32 commission of an offense that is either a felony or
 33 misdemeanor, solicits, compels or directs any person under

1 the age of 17 years in the commission of the offense commits
2 the offense of contributing to the criminal delinquency of a
3 juvenile.

4 (b) Sentence. Contributing to the criminal delinquency
5 of a juvenile is a felony one grade higher than the offense
6 committed, if the offense committed is a felony, except when
7 the offense committed is first degree murder or a Class X
8 felony. When the offense committed is first degree murder or
9 a Class X felony, the penalty for contributing to the
10 criminal delinquency of a juvenile is the same as the penalty
11 for first degree murder or a Class X felony, respectively.
12 Contributing to the criminal delinquency of a juvenile is a
13 misdemeanor one grade higher than the offense committed, if
14 the offense committed is a misdemeanor, except when the
15 offense committed is a Class A misdemeanor. If the offense
16 committed is a Class A misdemeanor, the penalty for
17 contributing to the criminal delinquency of a juvenile is a
18 Class 4 felony.

19 (Source: P.A. 91-337, eff. 1-1-00.)

20 Section 10. The Wrongs to Children Act is amended by
21 changing Section 5.1 as follows:

22 (720 ILCS 150/5.1) (from Ch. 23, par. 2355.1)

23 Sec. 5.1. Permitting sexual abuse of a child.

24 (a) A person responsible for a child's welfare commits
25 the offense of permitting sexual abuse of a child if he or
26 she knowingly permits or allows an act of sexual abuse upon
27 the child, or knowingly permits or allows the child to engage
28 in prostitution as defined in Section 11-14 of the Criminal
29 Code of 1961.

30 (b) In this Section:

31 "Child" means a minor under the age of 17 years.

32 "Person responsible for the child's welfare" means the

1 child's parent, step-parent, guardian, foster parent, or a
2 person over 17 years of age who is responsible for the
3 child's care at the time of the alleged sexual abuse.

4 "Sexual abuse" includes criminal sexual abuse or criminal
5 sexual assault as defined in Section 12-13, 12-14, 12-14.1,
6 12-15, or 12-16 of the Criminal Code of 1961.

7 (c) This Section does not apply to a person responsible
8 for the child's welfare who, having reason to believe that
9 sexual abuse has occurred, makes timely and reasonable
10 efforts to stop the sexual abuse by reporting the sexual
11 abuse in conformance with the Abused and Neglected Child
12 Reporting Act or by reporting the sexual abuse, or causing a
13 report to be made, to medical or law enforcement authorities.

14 (d) A person convicted of permitting the sexual abuse of
15 a child is guilty of a Class 4 felony. A second or
16 subsequent offense is a Class 2 felony, except that when the
17 sexual abuse involved sexual penetration causing bodily harm
18 to the child, it is a Class 1 felony. As a condition of any
19 sentence of supervision, probation, conditional discharge, or
20 mandatory supervised release, any person convicted under this
21 Section shall be ordered to undergo child sexual abuse,
22 domestic violence, or other appropriate training or
23 counseling for a specified duration, with a qualified social
24 or mental health worker. A--A--parent,--step-parent,--legal
25 guardian,--or--other--person--having--custody--of--a--child--who
26 knowingly--allows--or--permits--an--act--of--criminal--sexual--abuse
27 or--criminal--sexual--assault--as--defined--in--Section--12--13,
28 12--14,--12--14.1,--12--15--or--12--16--of--the--Criminal--Code--of--1961,
29 upon--his--or--her--child,--or--knowingly--permits,--induces,
30 promotes,--or--arranges--for--the--child--to--engage--in--prostitution
31 as--defined--in--Section--11--14--of--the--Criminal--Code--of--1961,--and
32 fails--to--take--reasonable--steps--to--prevent--its--commission--or
33 future--occurrences--of--such--acts--commits--the--offense--of
34 permitting--the--sexual--abuse--of--a--child.--For--purposes--of--this

1 Section, -"child"-means-a-minor-under-the-age-of-17-years.
2 B.--Any--person--convicted-of-permitting-the-sexual-abuse
3 of-a-child-is-guilty-of-a-Class-1-felony.
4 (Source: P.A. 91-696, eff. 4-13-00.)

5 Section 99. Effective date. This Act takes effect upon
6 becoming law.