

ILLINOIS STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

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§ 720 ILCS 5/11-20. Obscenity

- Sec. 11-20. **Obscenity.** (a) Elements of the Offense. A person commits **obscurity** when, with knowledge of the nature or content thereof, or recklessly failing to exercise reasonable inspection which would have disclosed the nature or content thereof, he or she:
 - (1) Sells, delivers or provides, or offers or agrees to sell, deliver or provide any **obscenewriting**, picture, record or other representation or embodiment of the **obscene**; or
 - (2) Presents or directs an **obscene** play, dance or other performance or participates directly in that portion thereof which makes it **obscene**; or
 - (3) Publishes, exhibits or otherwise makes available anything **obscene**; or
 - (4) Performs an **obscene** act or otherwise presents an **obscene** exhibition of his or her body for gain; or
 - (5) Creates, buys, procures or possesses **obscene** matter or material with intent to disseminate it in violation of this Section, or of the penal laws or regulations of any other jurisdiction; or
 - (6) Advertises or otherwise promotes the sale of material represented or held out by him or her to be **obscene**, whether or not it is **obscene**.
 - (b) **Obscene** Defined. Any material or performance is **obscene** if: (1) the average person, applying contemporary adult community standards, would find that, taken as a whole, it appeals to the prurient interest; and (2) the average person, applying contemporary adult community standards, would find that it depicts or describes, in a patently offensive way, ultimate sexual acts or sadomasochistic sexual acts, whether normal or perverted, actual or simulated, or masturbation, excretory functions or lewd exhibition of the genitals; and (3) taken as a whole, it lacks serious literary, artistic, political or scientific value.
 - (c) Interpretation of Evidence. **Obscurity** shall be judged with reference to ordinary adults, except that it shall be judged with reference to children or other specially susceptible audiences if it appears from the character of the material or the circumstances of its dissemination to be specially designed for or directed to such an audience.
 - Where circumstances of production, presentation, sale, dissemination, distribution, or publicity indicate that material is being commercially exploited for the sake of its prurient appeal, such evidence is probative with respect to the nature of the matter and can justify the conclusion that the matter is lacking in serious literary, artistic, political or scientific value.
 - In any prosecution for an offense under this Section evidence shall be admissible to show:
 - (1) The character of the audience for which the material was designed or to which it was directed;
 - (2) What the predominant appeal of the material would be for ordinary adults or a special audience, and what effect, if any, it would probably have on the behavior of such people;
 - (3) The artistic, literary, scientific, educational or other merits of the material, or absence thereof;

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- (4) The degree, if any, of public acceptance of the material in this State;
- (5) Appeal to prurient interest, or absence thereof, in advertising or other promotion of the material;
- (6) Purpose of the author, creator, publisher or disseminator.
- (d) Sentence. **Obscenity** is a Class A misdemeanor. A second or subsequent offense is a Class 4 felony.
- (e) Permissive Inference.
- The trier of fact may infer an intent to disseminate from the creation, purchase, procurement or possession of a mold, engraved plate or other embodiment of **obscurity** specially adapted for reproducing multiple copies, or the possession of more than 3 copies of **obscene** material.
- (f) Affirmative Defenses. It shall be an affirmative defense to **obscurity** that the dissemination:
 - (1) Was not for gain and was made to personal associates other than children under 18 years of age;
 - (2) Was to institutions or individuals having scientific or other special justification for possession of such material.
- (g) Forfeiture of property. A person who has been convicted previously of the offense of **obscurity** and who is convicted of a second or subsequent offense of **obscurity** is subject to the property forfeiture provisions set forth in Article 124B of the Code of Criminal Procedure of 1963 [725 ILCS 5/124B-5 et seq.].

§ 720 ILCS 5/11-20.1. Child pornography

- Sec. 11-20.1. Child pornography. (a) A person commits child pornography who:
 - (1) films, videotapes, photographs, or otherwise depicts or portrays by means of any similar visual medium or reproduction or depicts by computer any child whom he or she knows or reasonably should know to be under the age of 18 and at least 13 years of age or any severely or profoundly intellectually disabled person where such child or severely or profoundly intellectually disabled person is:
 - (i) actually or by simulation engaged in any act of sexual penetration or sexual conduct with any person or animal; or
 - (ii) actually or by simulation engaged in any act of sexual penetration or sexual conduct involving the sex organs of the child or severely or profoundly intellectually disabled person and the mouth, anus, or sex organs of another person or animal; or which involves the mouth, anus or sex organs of the child or severely or profoundly intellectually disabled person and the sex organs of another person or animal; or
 - (iii) actually or by simulation engaged in any act of masturbation; or
 - (iv) actually or by simulation portrayed as being the object of, or otherwise engaged in, any act of lewd fondling, touching, or caressing involving another person or animal; or
 - (v) actually or by simulation engaged in any act of excretion or urination within a sexual context; or

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- (vi) actually or by simulation portrayed or depicted as bound, fettered, or subject to sadistic, masochistic, or sadomasochistic abuse in any sexual context; or
- (vii) depicted or portrayed in any pose, posture or setting involving a lewd exhibition of the unclothed or transparently clothed genitals, pubic area, buttocks, or, if such person is female, a fully or partially developed breast of the child or other person; or
- (2) with the knowledge of the nature or content thereof, reproduces, disseminates, offers to disseminate, exhibits or possesses with intent to disseminate any film, videotape, photograph or other similar visual reproduction or depiction by computer of any child or severely or profoundly intellectually disabled person whom the person knows or reasonably should know to be under the age of 18 and at least 13 years of age or to be a severely or profoundly intellectually disabled person, engaged in any activity described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or
- (3) with knowledge of the subject matter or theme thereof, produces any stage play, live performance, film, videotape or other similar visual portrayal or depiction by computer which includes a child whom the person knows or reasonably should know to be under the age of 18 and at least 13 years of age or a severely or profoundly intellectually disabled person engaged in any activity described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or
- (4) solicits, uses, persuades, induces, entices, or coerces any child whom he or she knows or reasonably should know to be under the age of 18 and at least 13 years of age or a severely or profoundly intellectually disabled person to appear in any stage play, live presentation, film, videotape, photograph or other similar visual reproduction or depiction by computer in which the child or severely or profoundly intellectually disabled person is or will be depicted, actually or by simulation, in any act, pose or setting described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or
- (5) is a parent, step-parent, legal guardian or other person having care or custody of a child whom the person knows or reasonably should know to be under the age of 18 and at least 13 years of age or a severely or profoundly intellectually disabled person and who knowingly permits, induces, promotes, or arranges for such child or severely or profoundly intellectually disabled person to appear in any stage play, live performance, film, videotape, photograph or other similar visual presentation, portrayal or simulation or depiction by computer of any act or activity described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or
- (6) with knowledge of the nature or content thereof, possesses any film, videotape, photograph or other similar visual reproduction or depiction by computer of any child or severely or profoundly intellectually disabled person whom the person knows or reasonably should know to be under the age of 18 and at least 13 years of age or to be a severely or profoundly intellectually disabled person, engaged in any activity described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or
- (7) solicits, or knowingly uses, persuades, induces, entices, or coerces, a person to provide a child under the age of 18 and at least 13 years of age or a

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severely or profoundly intellectually disabled person to appear in any videotape, photograph, film, stage play, live presentation, or other similar visual reproduction or depiction by computer in which the child or severely or profoundly intellectually disabled person will be depicted, actually or by simulation, in any act, pose, or setting described in subparagraphs (i) through (vii) of paragraph (1) of this subsection.

- (b) (1) It shall be an affirmative defense to a charge of child pornography that the defendant reasonably believed, under all of the circumstances, that the child was 18 years of age or older or that the person was not a severely or profoundly intellectually disabled person but only where, prior to the act or acts giving rise to a prosecution under this Section, he or she took some affirmative action or made a bonafide inquiry designed to ascertain whether the child was 18 years of age or older or that the person was not a severely or profoundly intellectually disabled person and his or her reliance upon the information so obtained was clearly reasonable.
- (1.5) Telecommunications carriers, commercial mobile service providers, and providers of information services, including, but not limited to, Internet service providers and hosting service providers, are not liable under this Section by virtue of the transmission, storage, or caching of electronic communications or messages of others or by virtue of the provision of other related telecommunications, commercial mobile services, or information services used by others in violation of this Section.
- (2) (Blank).
- (3) The charge of child pornography shall not apply to the performance of official duties by law enforcement or prosecuting officers or persons employed by law enforcement or prosecuting agencies, court personnel or attorneys, nor to bonafide treatment or professional education programs conducted by licensed physicians, psychologists or social workers.
- (4) If the defendant possessed more than one of the same film, videotape or visual reproduction or depiction by computer in which child pornography is depicted, then the trier of fact may infer that the defendant possessed such materials with the intent to disseminate them.
- (5) The charge of child pornography does not apply to a person who does not voluntarily possess a film, videotape, or visual reproduction or depiction by computer in which child pornography is depicted. Possession is voluntary if the defendant knowingly procures or receives a film, videotape, or visual reproduction or depiction for a sufficient time to be able to terminate his or her possession.
- (6) Any violation of paragraph (1), (2), (3), (4), (5), or (7) of subsection (a) that includes a child engaged in, solicited for, depicted in, or posed in any act of sexual penetration or bound, fettered, or subject to sadistic, masochistic, or sadomasochistic abuse in a sexual context shall be deemed a crime of violence.
 - (c) If the violation does not involve a film, videotape, or other moving depiction, a violation of paragraph (1), (4), (5), or (7) of subsection (a) is a Class 1 felony with a mandatory minimum fine of \$ 2,000 and a maximum fine of \$ 100,000. If the violation involves a film, videotape, or other moving depiction, a violation of paragraph (1), (4), (5), or (7) of subsection (a) is a Class X felony with a mandatory minimum fine of \$

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2,000 and a maximum fine of \$ 100,000. If the violation does not involve a film, videotape, or other moving depiction, a violation of paragraph (3) of subsection (a) is a Class 1 felony with a mandatory minimum fine of \$ 1500 and a maximum fine of \$ 100,000. If the violation involves a film, videotape, or other moving depiction, a violation of paragraph (3) of subsection (a) is a Class X felony with a mandatory minimum fine of \$ 1500 and a maximum fine of \$ 100,000. If the violation does not involve a film, videotape, or other moving depiction, a violation of paragraph (2) of subsection (a) is a Class 1 felony with a mandatory minimum fine of \$ 1000 and a maximum fine of \$ 100,000. If the violation involves a film, videotape, or other moving depiction, a violation of paragraph (2) of subsection (a) is a Class X felony with a mandatory minimum fine of \$ 1000 and a maximum fine of \$ 100,000. If the violation does not involve a film, videotape, or other moving depiction, a violation of paragraph (6) of subsection (a) is a Class 3 felony with a mandatory minimum fine of \$ 1000 and a maximum fine of \$ 100,000. If the violation involves a film, videotape, or other moving depiction, a violation of paragraph (6) of subsection (a) is a Class 2 felony with a mandatory minimum fine of \$ 1000 and a maximum fine of \$ 100,000.

- (d) If a person is convicted of a second or subsequent violation of this Section within 10 years of a prior conviction, the court shall order a presentence psychiatric examination of the person. The examiner shall report to the court whether treatment of the person is necessary.
- (e) Any film, videotape, photograph or other similar visual reproduction or depiction by computer which includes a child under the age of 18 and at least 13 years of age or a severely or profoundly intellectually disabled person engaged in any activity described in subparagraphs (i) through (vii) or paragraph 1 of subsection (a), and any material or equipment used or intended for use in photographing, filming, printing, producing, reproducing, manufacturing, projecting, exhibiting, depiction by computer, or disseminating such material shall be seized and forfeited in the manner, method and procedure provided by Section 36-1 of this Code [720 ILCS 5/36-1] for the seizure and forfeiture of vessels, vehicles and aircraft.
- In addition, any person convicted under this Section is subject to the property forfeiture provisions set forth in Article 124B of the Code of Criminal Procedure of 1963 [725 ILCS 5/124B-5 et seq.].
- (e-5) Upon the conclusion of a case brought under this Section, the court shall seal all evidence depicting a victim or witness that is sexually explicit. The evidence may be unsealed and viewed, on a motion of the party seeking to unseal and view the evidence, only for good cause shown and in the discretion of the court. The motion must expressly set forth the purpose for viewing the material. The State's attorney and the victim, if possible, shall be provided reasonable notice of the hearing on the motion to unseal the evidence. Any person entitled to notice of a hearing under this subsection (e-5) may object to the motion.
- (f) Definitions. For the purposes of this Section:

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- (1) "Disseminate" means (i) to sell, distribute, exchange or transfer possession, whether with or without consideration or (ii) to make a depiction by computer available for distribution or downloading through the facilities of any telecommunications network or through any other means of transferring computer programs or data to a computer.
- (2) "Produce" means to direct, promote, advertise, publish, manufacture, issue, present or show.
- (3) "Reproduce" means to make a duplication or copy.
- (4) "Depict by computer" means to generate or create, or cause to be created or generated, a computer program or data that, after being processed by a computer either alone or in conjunction with one or more computer programs, results in a visual depiction on a computer monitor, screen, or display.
- (5) "Depiction by computer" means a computer program or data that, after being processed by a computer either alone or in conjunction with one or more computer programs, results in a visual depiction on a computer monitor, screen, or display.
- (6) "Computer", "computer program", and "data" have the meanings ascribed to them in Section 16D-2 of this Code [720 ILCS 5/16D-2 (now repealed)].
- (7) For the purposes of this Section, "child pornography" includes a film, videotape, photograph, or other similar visual medium or reproduction or depiction by computer that is, or appears to be, that of a person, either in part, or in total, under the age of 18 and at least 13 years of age or a severely or profoundly mentally retarded person, regardless of the method by which the film, videotape, photograph, or other similar visual medium or reproduction or depiction by computer is created, adopted, or modified to appear as such. "Child pornography" also includes a film, videotape, photograph, or other similar visual medium or reproduction or depiction by computer that is advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the film, videotape, photograph, or other similar visual medium or reproduction or depiction by computer is of a person under the age of 18 and at least 13 years of age or a severely or profoundly mentally retarded person.
- (g) Re-enactment; findings; purposes.
 - (1) The General Assembly finds and declares that:
 - (i) Section 50-5 of Public Act 88-680, effective January 1, 1995, contained provisions amending the child pornography statute, Section 11-20.1 of the Criminal Code of 1961 [720 ILCS 5/11-20.1]. Section 50-5 also contained other provisions [720 ILCS 5/50-5].
 - (ii) In addition, Public Act 88-680 was entitled "AN ACT to create a Safe Neighborhoods Law". (A) Article 5 was entitled JUVENILE JUSTICE and amended the Juvenile Court Act of 1987 [705 ILCS 405/1-1 et seq.]. (B) Article 15 was entitled GANGS and amended various provisions of the

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Criminal Code of 1961 [720 ILCS 5/1-1 et seq.] and the Unified Code of Corrections [730 ILCS 5/1-1-1 et seq.]. (C) Article 20 was entitled ALCOHOL ABUSE and amended various provisions of the Illinois Vehicle Code [625 ILCS 5/1-100 et seq.]. (D) Article 25 was entitled DRUG ABUSE and amended the Cannabis Control Act [720 ILCS 550/1 et seq.] and the Illinois Controlled Substances Act [720 ILCS 570/100 et seq.]. (E) Article 30 was entitled FIREARMS and amended the Criminal Code of 1961 and the Code of Criminal Procedure of 1963 [725 ILCS 5/100-1 et seq.]. (F) Article 35 amended the Criminal Code of 1961, the Rights of Crime Victims and Witnesses Act [725 ILCS 120/1 et seq.], and the Unified Code of Corrections. (G) Article 40 amended the Criminal Code of 1961 to increase the penalty for compelling organization membership of persons. (H) Article 45 created the Secure Residential Youth Care Facility Licensing Act [730 ILCS 175/45-1 et seq.] and amended the State Finance Act [30 ILCS 105/1 et seq.], the Juvenile Court Act of 1987, the Unified Code of Corrections, and the Private Correctional Facility Moratorium Act [730 ILCS 140/1 et seq.]. (I) Article 50 amended the WIC Vendor Management Act [410 ILCS 255/1 et seq.], the Firearm Owners Identification Card Act [430 ILCS 65/0.01 et seq.], the Juvenile Court Act of 1987, the Criminal Code of 1961, the Wrongs to Children Act [720 ILCS 150/0.01 et seq.], and the Unified Code of Corrections.

- (iii) On September 22, 1998, the Third District Appellate Court in People v. Dainty, 701 N.E. 2d 118, ruled that Public Act 88-680 violates the single subject clause of the Illinois Constitution (Article IV, Section 8 (d)) and was unconstitutional in its entirety. As of the time this amendatory Act of 1999 [P.A. 91-54] was prepared, People v. Dainty was still subject to appeal.
- (iv) Child pornography is a vital concern to the people of this State and the validity of future prosecutions under the child pornography statute of the Criminal Code of 1961 is in grave doubt.
- (2) It is the purpose of this amendatory Act of 1999 to prevent or minimize any problems relating to prosecutions for child pornography that may result from challenges to the constitutional validity of Public Act 88-680 by re-enacting the Section relating to child pornography that was included in Public Act 88-680.
- (3) This amendatory Act of 1999 re-enacts Section 11-20.1 of the Criminal Code of 1961, as it has been amended. This re-enactment is intended to remove any question as to the validity or content of that Section; it is not intended to supersede any other Public Act that amends the text of the Section as set forth in this amendatory Act of 1999. The material is shown as existing text (i.e., without underscoring) because, as of the time this

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amendatory Act of 1999 was prepared, *People v. Dainty* was subject to appeal to the Illinois Supreme Court.

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

§ 720 ILCS 5/11-20.1B. Aggravated child pornography

- Sec. 11-20.1B. Aggravated child pornography. (a) A person commits aggravated child pornography who:
 - (1) films, videotapes, photographs, or otherwise depicts or portrays by means of any similar visual medium or reproduction or depicts by computer any child whom he or she knows or reasonably should know to be under the age of 13 years where such child is:
 - (i) actually or by simulation engaged in any act of sexual penetration or sexual conduct with any person or animal; or
 - (ii) actually or by simulation engaged in any act of sexual penetration or sexual conduct involving the sex organs of the child and the mouth, anus, or sex organs of another person or animal; or which involves the mouth, anus or sex organs of the child and the sex organs of another person or animal; or
 - (iii) actually or by simulation engaged in any act of masturbation; or
 - (iv) actually or by simulation portrayed as being the object of, or otherwise engaged in, any act of lewd fondling, touching, or caressing involving another person or animal; or
 - (v) actually or by simulation engaged in any act of excretion or urination within a sexual context; or
 - (vi) actually or by simulation portrayed or depicted as bound, fettered, or subject to sadistic, masochistic, or sadomasochistic abuse in any sexual context; or
 - (vii) depicted or portrayed in any pose, posture or setting involving a lewd exhibition of the unclothed or transparently clothed genitals, pubic area, buttocks, or, if such person is female, a fully or partially developed breast of the child or other person; or
 - (2) with the knowledge of the nature or content thereof, reproduces, disseminates, offers to disseminate, exhibits or possesses with intent to disseminate any film, videotape, photograph or other similar visual reproduction or depiction by computer of any child whom the person knows or reasonably should know to be under the age of 13 engaged in any activity described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or
 - (3) with knowledge of the subject matter or theme thereof, produces any stage play, live performance, film, videotape or other similar visual portrayal or depiction by computer which includes a child whom the person knows or reasonably should know to be under the age of 13 engaged in any activity

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- described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or
- (4) solicits, uses, persuades, induces, entices, or coerces any child whom he or she knows or reasonably should know to be under the age of 13 to appear in any stage play, live presentation, film, videotape, photograph or other similar visual reproduction or depiction by computer in which the child or severely or profoundly intellectually disabled person is or will be depicted, actually or by simulation, in any act, pose or setting described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or
 - (5) is a parent, step-parent, legal guardian or other person having care or custody of a child whom the person knows or reasonably should know to be under the age of 13 and who knowingly permits, induces, promotes, or arranges for such child to appear in any stage play, live performance, film, videotape, photograph or other similar visual presentation, portrayal or simulation or depiction by computer of any act or activity described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or
 - (6) with knowledge of the nature or content thereof, possesses any film, videotape, photograph or other similar visual reproduction or depiction by computer of any child whom the person knows or reasonably should know to be under the age of 13 engaged in any activity described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or
 - (7) solicits, or knowingly uses, persuades, induces, entices, or coerces a person to provide a child under the age of 13 to appear in any videotape, photograph, film, stage play, live presentation, or other similar visual reproduction or depiction by computer in which the child will be depicted, actually or by simulation, in any act, pose, or setting described in subparagraphs (i) through (vii) of paragraph (1) of this subsection.
 - (b)
 - (1) It shall be an affirmative defense to a charge of aggravated child pornography that the defendant reasonably believed, under all of the circumstances, that the child was 13 years of age or older, but only where, prior to the act or acts giving rise to a prosecution under this Section, he or she took some affirmative action or made a bonafide inquiry designed to ascertain whether the child was 13 years of age or older and his or her reliance upon the information so obtained was clearly reasonable.
 - (2) The charge of aggravated child pornography shall not apply to the performance of official duties by law enforcement or prosecuting officers or persons employed by law enforcement or prosecuting agencies, court personnel or attorneys, nor to bonafide treatment or professional education programs conducted by licensed physicians, psychologists or social workers.
 - (3) If the defendant possessed more than 3 of the same film, videotape or visual reproduction or depiction by computer in which aggravated child pornography is depicted, then the trier of fact may infer that the defendant possessed such materials with the intent to disseminate them.
 - (4) The charge of aggravated child pornography does not apply to a person who does not voluntarily possess a film, videotape, or

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

- (5) Any violation of paragraph (1), (2), (3), (4), (5), or (7) of subsection (a) that includes a child engaged in, solicited for, depicted in, or posed in any act of sexual penetration or bound, fettered, or subject to sadistic, masochistic, or sadomasochistic abuse in a sexual context shall be deemed a crime of violence.
- (c) Sentence:
 - (1) A person who commits a violation of paragraph (1), (2), (3), (4), (5), or (7) of subsection (a) is guilty of a Class X felony with a mandatory minimum fine of \$ 2,000 and a maximum fine of \$ 100,000.
 - (2) A person who commits a violation of paragraph (6) of subsection (a) is guilty of a Class 2 felony with a mandatory minimum fine of \$ 1000 and a maximum fine of \$ 100,000.
 - (3) A person who commits a violation of paragraph (1), (2), (3), (4), (5), or (7) of subsection (a) where the defendant has previously been convicted under the laws of this State or any other state of the offense of child pornography, aggravated child pornography, aggravated criminal sexual abuse, aggravated criminal sexual assault, predatory criminal sexual assault of a child, or any of the offenses formerly known as rape, deviate sexual assault, indecent liberties with a child, or aggravated indecent liberties with a child where the victim was under the age of 18 years or an offense that is substantially equivalent to those offenses, is guilty of a Class X felony for which the person shall be sentenced to a term of imprisonment of not less than 9 years with a mandatory minimum fine of \$ 2,000 and a maximum fine of \$ 100,000.
 - (4) A person who commits a violation of paragraph (6) of subsection (a) where the defendant has previously been convicted under the laws of this State or any other state of the offense of child pornography, aggravated child pornography, aggravated criminal sexual abuse, aggravated criminal sexual assault, predatory criminal sexual assault of a child, or any of the offenses formerly known as rape, deviate sexual assault, indecent liberties with a child, or aggravated indecent liberties with a child where the victim was under the age of 18 years or an offense that is substantially equivalent to those offenses, is guilty of a Class 1 felony with a mandatory minimum fine of \$ 1000 and a maximum fine of \$ 100,000.
- (d) If a person is convicted of a second or subsequent violation of this Section within 10 years of a prior conviction, the court shall order a presentence psychiatric examination of the person. The examiner shall report to the court whether treatment of the person is necessary.

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- (e) Any film, videotape, photograph or other similar visual reproduction or depiction by computer which includes a child under the age of 13 engaged in any activity described in subparagraphs (i) through (vii) of paragraph (1) of subsection (a), and any material or equipment used or intended for use in photographing, filming, printing, producing, reproducing, manufacturing, projecting, exhibiting, depiction by computer, or disseminating such material shall be seized and forfeited in the manner, method and procedure provided by Section 36-1 of this Code [720 ILCS 5/36-1] for the seizure and forfeiture of vessels, vehicles and aircraft.
- In addition, any person convicted under this Section is subject to the property forfeiture provisions set forth in Article 124B of the Code of Criminal Procedure of 1963 [725 ILCS 5/124B-5 et seq.].
- (e-5) Upon the conclusion of a case brought under this Section, the court shall seal all evidence depicting a victim or witness that is sexually explicit. The evidence may be unsealed and viewed, on a motion of the party seeking to unseal and view the evidence, only for good cause shown and in the discretion of the court. The motion must expressly set forth the purpose for viewing the material. The State's attorney and the victim, if possible, shall be provided reasonable notice of the hearing on the motion to unseal the evidence. Any person entitled to notice of a hearing under this subsection (e-5) may object to the motion.
- (f) Definitions. For the purposes of this Section:
 - (1) "Disseminate" means (i) to sell, distribute, exchange or transfer possession, whether with or without consideration or (ii) to make a depiction by computer available for distribution or downloading through the facilities of any telecommunications network or through any other means of transferring computer programs or data to a computer.
 - (2) "Produce" means to direct, promote, advertise, publish, manufacture, issue, present or show.
 - (3) "Reproduce" means to make a duplication or copy.
 - (4) "Depict by computer" means to generate or create, or cause to be created or generated, a computer program or data that, after being processed by a computer either alone or in conjunction with one or more computer programs, results in a visual depiction on a computer monitor, screen, or display.
 - (5) "Depiction by computer" means a computer program or data that, after being processed by a computer either alone or in conjunction with one or more computer programs, results in a visual depiction on a computer monitor, screen, or display.
 - (6) "Computer", "computer program", and "data" have the meanings ascribed to them in Section 16D-2 of this Code [720 ILCS 5/16D-2 (now repealed)].
 - (7) For the purposes of this Section, "child" means a person, either in part or in total, under the age of 13, regardless of the method by which the film, videotape, photograph, or other similar visual medium or reproduction or depiction by computer is created, adopted, or modified to appear as such.

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- (g) When a charge of aggravated child pornography is brought, the age of the child is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding the age in question. The trier of fact can rely on its own everyday observations and common experiences in making this determination.

§ 720 ILCS 5/11-20.2. Duty of commercial film and photographic print processors or computer technicians to report sexual depiction of children

- Sec. 11-20.2. Duty of commercial film and photographic print processors or computer technicians to report sexual depiction of children. (a) Any commercial film and photographic print processor or computer technician who has knowledge of or observes, within the scope of his professional capacity or employment, any film, photograph, videotape, negative, slide, computer hard drive or any other magnetic or optical media which depicts a child whom the processor or computer technician knows or reasonably should know to be under the age of 18 where such child is:
 - (i) actually or by simulation engaged in any act of sexual penetration or sexual conduct with any person or animal; or
 - (ii) actually or by simulation engaged in any act of sexual penetration or sexual conduct involving the sex organs of the child and the mouth, anus, or sex organs of another person or animal; or which involves the mouth, anus or sex organs of the child and the sex organs of another person or animal; or
 - (iii) actually or by simulation engaged in any act of masturbation; or
 - (iv) actually or by simulation portrayed as being the object of, or otherwise engaged in, any act of lewd fondling, touching, or caressing involving another person or animal; or
 - (v) actually or by simulation engaged in any act of excretion or urination within a sexual context; or
 - (vi) actually or by simulation portrayed or depicted as bound, fettered, or subject to sadistic, masochistic, or sadomasochistic abuse in any sexual context; or
 - (vii) depicted or portrayed in any pose, posture or setting involving a lewd exhibition of the unclothed or transparently clothed genitals, pubic area, buttocks, or, if such person is female, a fully or partially developed breast of the child or other person;
 - shall report or cause a report to be made pursuant to subsections (b) and (c) as soon as reasonably possible. Failure to make such report shall be a business offense with a fine of \$ 1,000.
 - (b) Commercial film and photographic film processors shall report or cause a report to be made to the local law enforcement agency of the jurisdiction in which the image or images described in subsection (a) are discovered.
 - (c) Computer technicians shall report or cause the report to be made to the local law enforcement agency of the jurisdiction in which the image or images described in subsection (a) are discovered or to the Illinois Child Exploitation e-Tipline atreportchildporn@atg.state.il.us.
 - (d) Reports required by this Act shall include the following information:
 - (i) name, address, and telephone number of the person filing the report;
 - (ii) the employer of the person filing the report, if any; (iii) the name,

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address and telephone number of the person whose property is the subject of the report, if known; (iv) the circumstances which led to the filing of the report, including a description of the reported content.

- (e) If a report is filed with the Cyber Tipline at the National Center for Missing and Exploited Children or in accordance with the requirements of 42 U.S.C. 13032, the requirements of this Act will be deemed to have been met.
- (f) A computer technician or an employer caused to report child pornography under this Section is immune from any criminal, civil, or administrative liability in connection with making the report, except for willful or wanton misconduct.
- (g) For the purposes of this Section, a "computer technician" is a person who installs, maintains, troubleshoots, repairs or upgrades computer hardware, software, computer networks, peripheral equipment, electronic mail systems, or provides user assistance for any of the aforementioned tasks.

§ 720 ILCS 5/11-21. Harmful material

- Sec. 11-21. Harmful material. (a) As used in this Section:
- "Distribute" means to transfer possession of, whether with or without consideration.
- "Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, when, taken as a whole, it (i) predominately appeals to the prurient interest in sex of minors, (ii) is patently offensive to prevailing standards in the adult community in the State as a whole with respect to what is suitable material for minors, and (iii) lacks serious literary, artistic, political, or scientific value for minors.
- "Knowingly" means having knowledge of the contents of the subject matter, or recklessly failing to exercise reasonable inspection which would have disclosed the contents.
- "Material" means (i) any picture, photograph, drawing, sculpture, film, video game, computer game, video or similar visual depiction, including any such representation or image which is stored electronically, or (ii) any book, magazine, printed matter however reproduced, or recorded audio of any sort.
- "Minor" means any person under the age of 18.
- "Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion below the top of the nipple, or the depiction of covered male genitals in a discernably turgid state.
- "Sado-masochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one clothed for sexual gratification or stimulation.
- "Sexual conduct" means acts of masturbation, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be a female, breast.
- "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

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- (b) A person is guilty of distributing harmful material to a minor when he or she:
 - (1) knowingly sells, lends, distributes, exhibits to, depicts to, or gives away to a minor, knowing that the minor is under the age of 18 or failing to exercise reasonable care in ascertaining the person's true age:
 - (A) any material which depicts nudity, sexual conduct or sado-masochistic abuse, or which contains explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sado-masochistic abuse, and which taken as a whole is harmful to minors;
 - (B) a motion picture, show, or other presentation which depicts nudity, sexual conduct or sado-masochistic abuse and is harmful to minors; or
 - (C) an admission ticket or pass to premises where there is exhibited or to be exhibited such a motion picture, show, or other presentation; or
 - (2) admits a minor to premises where there is exhibited or to be exhibited such a motion picture, show, or other presentation, knowing that the minor is a person under the age of 18 or failing to exercise reasonable care in ascertaining the person's true age.
- (c) In any prosecution arising under this Section, it is an affirmative defense:
 - (1) that the minor as to whom the offense is alleged to have been committed exhibited to the accused a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that the minor was 18 years of age or older, which was relied upon by the accused;
 - (2) that the defendant was in a parental or guardianship relationship with the minor or that the minor was accompanied by a parent or legal guardian;
 - (3) that the defendant was a bona fide school, museum, or public library, or was a person acting in the course of his or her employment as an employee or official of such organization or retail outlet affiliated with and serving the educational purpose of such organization;
 - (4) that the act charged was committed in aid of legitimate scientific or educational purposes; or
 - (5) that an advertisement of harmful material as defined in this Section culminated in the sale or distribution of such harmful material to a child under circumstances where there was no personal confrontation of the child by the defendant, his or her employees, or agents, as where the order or request for such harmful material was transmitted by mail, telephone, Internet or similar means of communication, and delivery of such harmful material to the child was by mail, freight, Internet or similar means of transport, which advertisement contained the following statement, or a substantially similar statement, and that the defendant required the purchaser to certify that he or she was not under the age of 18 and that the purchaser falsely stated that he or she was not under the age of 18: "NOTICE: It is unlawful for any person under the age of 18 to purchase the matter advertised. Any person under the age of 18 that falsely states that he or she is not under the age of 18 for the

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purpose of obtaining the material advertised is guilty of a Class B misdemeanor under the laws of the State."

- (d) The predominant appeal to prurient interest of the material shall be judged with reference to average children of the same general age of the child to whom such material was sold, lent, distributed or given, unless it appears from the nature of the matter or the circumstances of its dissemination or distribution that it is designed for specially susceptible groups, in which case the predominant appeal of the material shall be judged with reference to its intended or probable recipient group.
- (e) Distribution of harmful material in violation of this Section is a Class A misdemeanor. A second or subsequent offense is a Class 4 felony.
- (f) Any person under the age of 18 who falsely states, either orally or in writing, that he or she is not under the age of 18, or who presents or offers to any person any evidence of age and identity that is false or not actually his or her own with the intent of ordering, obtaining, viewing, or otherwise procuring or attempting to procure or view any harmful material is guilty of a Class B misdemeanor.
- (g) A person over the age of 18 who fails to exercise reasonable care in ascertaining the true age of a minor, knowingly distributes to, or sends, or causes to be sent, or exhibits to, or offers to distribute, or exhibits any harmful material to a person that he or she believes is a minor is guilty of a Class A misdemeanor. If that person utilized a computer web camera, cellular telephone, or any other type of device to manufacture the harmful material, then each offense is a Class 4 felony.
- (h) Telecommunications carriers, commercial mobile service providers, and providers of information services, including, but not limited to, Internet service providers and hosting service providers, are not liable under this Section, except for willful and wanton misconduct, by virtue of the transmission, storage, or caching of electronic communications or messages of others or by virtue of the provision of other related telecommunications, commercial mobile services, or information services used by others in violation of this Section.

§ 720 ILCS 5/11-22. Tie-in sales of obscene publications to distributors

- Sec. 11-22. Tie-in sales of obscene publications to distributors. Any person, firm or corporation, or any agent, officer or employee thereof, engaged in the business of distributing books, magazines, periodicals, comic books or other publications to retail dealers, who shall refuse to furnish to any retail dealer such quantity of books, magazines, periodicals, comic books or other publications as such retail dealer normally sells because the retail dealer refuses to sell, or offer for sale, any books, magazines, periodicals, comic books or other publications which are obscene, lewd, lascivious, filthy or indecent is guilty of a petty offense. Each publication sold or delivered in violation of this Act shall constitute a separate petty offense.

§ 720 ILCS 5/11-23. Posting of identifying or graphic information on a pornographic Internet site or possessing graphic information with pornographic material

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- Sec. 11-23. Posting of identifying or graphic information on a pornographic Internet site or possessing graphic information with pornographic material. (a) A person at least 17 years of age who knowingly discloses on an adult obscenity or child pornography Internet site the name, address, telephone number, or e-mail address of a person under 17 years of age at the time of the commission of the offense or of a person at least 17 years of age without the consent of the person at least 17 years of age is guilty of posting of identifying information on a pornographic Internet site.
 - (a-5) Any person who knowingly places, posts, reproduces, or maintains on an adult obscenity or child pornography Internet site a photograph, video, or digital image of a person under 18 years of age that is not child pornography under Section 11-20.1 [720 ILCS 5/11-20.1], without the knowledge and consent of the person under 18 years of age, is guilty of posting of graphic information on a pornographic Internet site. This provision applies even if the person under 18 years of age is fully or properly clothed in the photograph, video, or digital image.
 - (a-10) Any person who knowingly places, posts, reproduces, or maintains on an adult obscenity or child pornography Internet site, or possesses with obscene or child pornographic material a photograph, video, or digital image of a person under 18 years of age in which the child is posed in a suggestive manner with the focus or concentration of the image on the child's clothed genitals, clothed pubic area, clothed buttocks area, or if the child is female, the breast exposed through transparent clothing, and the photograph, video, or digital image is not child pornography under Section 11-20.1, is guilty of posting of graphic information on a pornographic Internet site or possessing graphic information with pornographic material.
 - (b) Sentence. A person who violates subsection (a) of this Section is guilty of a Class 4 felony if the victim is at least 17 years of age at the time of the offense and a Class 3 felony if the victim is under 17 years of age at the time of the offense. A person who violates subsection (a-5) of this Section is guilty of a Class 4 felony. A person who violates subsection (a-10) of this Section is guilty of a Class 3 felony.
 - (c) Definitions. For purposes of this Section:
 - (1) "Adult obscenity or child pornography Internet site" means a site on the Internet that contains material that is obscene as defined in Section 11-20 of this Code [720 ILCS 5/11-20] or that is child pornography as defined in Section 11-20.1 of this Code.
 - (2) "Internet" has the meaning set forth in Section 16J-5 of this Code [720 ILCS 5/16J-5].

§ 720 ILCS 5/11-24. Child photography by sex offender

- Sec. 11-24. Child photography by sex offender. (a) In this Section:
 - "Child" means a person under 18 years of age.
 - "Child sex offender" has the meaning ascribed to it in Section 11-0.1 of this Code [720 ILCS 5/11-0.1].
 - (b) It is unlawful for a child sex offender to knowingly:
 - (1) conduct or operate any type of business in which he or she photographs, videotapes, or takes a digital image of a child; or

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- (2) conduct or operate any type of business in which he or she instructs or directs another person to photograph, videotape, or take a digital image of a child; or
- (3) photograph, videotape, or take a digital image of a child, or instruct or direct another person to photograph, videotape, or take a digital image of a child without the consent of the parent or guardian.
- (c) Sentence. A violation of this Section is a Class 2 felony. A person who violates this Section at a playground, park facility, school, forest preserve, day care facility, or at a facility providing programs or services directed to persons under 17 years of age is guilty of a Class 1 felony.

§ 720 ILCS 5/11-25. Grooming

- Sec. 11-25. Grooming. (a) A person commits the offense of grooming when he or she knowingly uses a computer on-line service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child, a child's guardian, or another person believed by the person to be a child or a child's guardian, to commit any sex offense as defined in Section 2 of the Sex Offender Registration Act [[730 ILCS 150/2](#)] or to otherwise engage in any unlawful sexual conduct with a child or with another person believed by the person to be a child.
 - (b) Sentence. Grooming is a Class 4 felony.

§ 720 ILCS 5/11-26. Traveling to meet a minor

- Sec. 11-26. Traveling to meet a minor. (a) A person commits the offense of traveling to meet a minor when he or she travels any distance either within this State, to this State, or from this State by any means, attempts to do so, or causes another to do so or attempt to do so for the purpose of engaging in any sex offense as defined in Section 2 of the Sex Offender Registration Act [[730 ILCS 150/2](#)], or to otherwise engage in other unlawful sexual conduct with a child or with another person believed by the person to be a child after using a computer on-line service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to seduce, solicit, lure, or entice, or to attempt to seduce, solicit, lure, or entice, a child or a child's guardian, or another person believed by the person to be a child or a child's guardian, for such purpose.
 - (b) Sentence. Traveling to meet a minor is a Class 3 felony.

§ 720 ILCS 5/11-30. Public indecency

- Sec. 11-30. Public indecency. (a) Any person of the age of 17 years and upwards who performs any of the following acts in a public place commits a public indecency:
 - (1) An act of sexual penetration or sexual conduct; or
 - (2) A lewd exposure of the body done with intent to arouse or to satisfy the sexual desire of the person.
 - Breast-feeding of infants is not an act of public indecency.
 - (b) "Public place" for purposes of this Section means any place where the conduct may reasonably be expected to be viewed by others.
 - (c) Sentence.

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- Public indecency is a Class A misdemeanor. A person convicted of a third or subsequent violation for public indecency is guilty of a Class 4 felony. Public indecency is a Class 4 felony if committed by a person 18 years of age or older who is on or within 500 feet of elementary or secondary school grounds when children are present on the grounds.

§ 720 ILCS 135/1-1. Harassment by telephone

- Sec. 1-1. Harassment by telephone. Harassment by telephone is use of telephone communication for any of the following purposes:
 - (1) Making any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy or indecent with an intent to offend; or

§ 720 ILCS 135/1-2. Harassment through electronic communications

- Sec. 1-2. Harassment through electronic communications. (a) Harassment through electronic communications is the use of electronic communication for any of the following purposes:
 - (1) Making any comment, request, suggestion or proposal which is **obscene** with an intent to offend;
 -

§ 65 ILCS 5/11-5-1. [Bawdy or disorderly houses; houses of ill-fame or assignation; gambling; obscene material]

- Sec. 11-5-1. The corporate authorities of each municipality may suppress bawdy or disorderly houses and also houses of ill-fame or assignation, within the limits of the municipality and within 3 miles of the outer boundaries of the municipality. The corporate authorities may suppress gaming, gambling houses, lotteries, and all fraudulent devices or practices for the purpose of obtaining money or property and may prohibit the sale or exhibition of **obscene** or immoral publications, prints, pictures, or illustrations.

§ 55 ILCS 5/5-1097.5. Adult entertainment facility

- Sec. 5-1097.5. Adult entertainment facility. It is prohibited within an unincorporated area of a county to locate an adult entertainment facility within 3,000 feet of the property boundaries of any school, day care center, cemetery, public park, forest preserve, public housing, place of religious worship, or residence, except that in a county with a population of more than 800,000 and less than 2,000,000 inhabitants, it is prohibited to locate, construct, or operate a new adult entertainment facility within one mile of the property boundaries of any school, day care center, cemetery, public park, forest preserve, public housing, or place of religious worship located anywhere within that county. Notwithstanding any other requirements of this Section, it is also prohibited to locate, construct, or operate a new adult entertainment facility within one mile of the property boundaries of any school, day care center, cemetery, public park, forest preserve, public housing, or place of religious worship located in that area of Cook County outside of the City of Chicago.
- For the purposes of this Section, "adult entertainment facility" means (i) a striptease club or pornographic movie theatre whose business is the commercial sale,

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dissemination, or distribution of sexually explicit material, shows, or other exhibitions or (ii) an adult bookstore or adult video store whose primary business is the commercial sale, dissemination, or distribution of sexually explicit material, shows, or other exhibitions. "Unincorporated area of a county" means any area not within the boundaries of a municipality.

- The State's Attorney of the county where the adult entertainment facility is located or the Attorney General may institute a civil action for an injunction to restrain violations of this Section. In that proceeding, the court shall determine whether a violation has been committed and shall enter such orders as it considers necessary to remove the effect of any violation and to prevent the violation from continuing or from being renewed in the future.

§ 55 ILCS 5/5-1097.7. Local ordinances to regulate adult entertainment facilities and obscenity

- Sec. 5-1097.7. Local ordinances to regulate adult entertainment facilities and **obscenity**. (a) Definitions. In this Act:
 - "Specified anatomical area" means human genitals or pubic region, buttocks, anus, or the female breast below a point immediately above the top the areola that is less than completely or opaquely covered, or human male genitals in a discernibly turgid state even if completely or opaquely covered.
 - "Specified sexual activities" means (i) human genitals in a state of sexual stimulation or excitement; (ii) acts of human masturbation, sexual intercourse, fellatio, or sodomy; (iii) fondling, kissing, or erotic touching of specified anatomical areas; (iv) flagellation or torture in the context of a sexual relationship; (v) masochism, erotic or sexually oriented torture, beating, or the infliction of pain; (vi) erotic touching, fondling, or other such contact with an animal by a human being; or (vii) human excretion, urination, menstruation, or vaginal or anal irrigation as part of or in connection with any of the activities set forth in items (i) through (vi).
 - (b) Ordinance to regulate adult entertainment facilities. A county may adopt by ordinance reasonable regulations concerning the operation of any business: (i) defined as an adult entertainment facility in Section 5-1097.5 of this Act [55 ILCS 5/5-1097.5] or (ii) that offers or provides activities by employees, agents, or contractors of the business that involve exposure of specified anatomical areas or performance of specified sexual activities in view of any patron, client, or customer of the business. A county ordinance may also prohibit the sale, dissemination, display, exhibition, or distribution of **obscene** materials or conduct. A county adopting an ordinance to regulate adult entertainment facilities may authorize the State's Attorney to institute a civil action to restrain violations of that ordinance. In that proceeding, the court shall enter such orders as it considers necessary to abate the violation and to prevent the violation from continuing or from being renewed in the future. In addition to any injunctive relief granted by the court, an ordinance may further authorize the court to assess fines of up to \$ 1,000 per day for each violation of the ordinance, with each day in violation constituting a new and separate offense.

§ 725 ILCS 5/108-12. Disposition of obscene material

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- Sec. 108-12. Disposition of **obscene** material. In the case of any material seized which is alleged to have been possessed or used or intended to be used contrary to, or is evidence of a violation of, Section 11-20 of the "Criminal Code of 1961", approved July 28, 1961, as heretofore and hereafter amended [720 ILCS 5/11-20], the court before which the material is returned shall, upon written request of any person from whom the material was seized or any person claiming ownership or other right to possession of such material, enter an order providing for a hearing to determine the **obscene** nature thereof not more than 10 days after such return. If the material is determined to be **obscene** it shall be held pending further proceedings as provided by Section 108-11 of this Code [725 ILCS 5/108-11]. If the material is determined not to be **obscene** it shall be returned to the person from whom or place from which it was seized, or to the person claiming ownership or other right to possession of such material; provided that enough of the record material may be retained by the State for purposes of appellate proceedings. The decision of the court upon this hearing shall not be admissible as evidence in any other proceeding nor shall it be res judicata of any question in any other proceeding.

§ 720 ILCS 135/1. [Sending obscene messages]

- Sec. 1. Any person in this State who sends messages or uses language or terms which are **obscene**, lewd or immoral with the intent to offend by means of or while using a telephone or telegraph facilities, equipment or wires of any person, firm or corporation engaged in the transmission of news or messages between states or within the State of Illinois is guilty of a Class B misdemeanor. The use of language or terms which are **obscene**, lewd or immoral is prima facie evidence of the intent to offend.