

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2004

A N A C T

RELATING TO CRIMINAL OFFENSES -- CHILDREN

Introduced By: Representatives Lewiss, Anguilla, Fox, Lally, and Schadone

Date Introduced: February 11, 2004

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 11-37 of the General Laws entitled "Sexual Assault" is hereby
2 amended by adding thereto the following sections:

3 **11-37-8.8. Indecent solicitation of a child.** – (a) A person is guilty of indecent
4 solicitation of a child if he or she knowingly solicits another person under eighteen (18) years of
5 age or one whom he or she believes is a person under eighteen (18) years of age for the purpose
6 of engaging in an act of prostitution or in any act in violation of chapter 9, 34, or 37 of title 11.

7 (b) As used in this section, the word "solicit" or "solicitation" means to command,
8 authorize, urge, incite, request, or advise another to perform an act by any means including, but
9 not limited to, in person, over the phone, in writing, by computer, through the Internet, or by
10 advertisement of any kind.

11 **11-37-8.9. Penalty for indecent solicitation of a child.** – Every person who shall
12 commit indecent solicitation of a child shall be imprisoned for not less than five (5) years.

13 SECTION 2. Sections 11-9-1.3 and 11-9-9 of the General Laws in Chapter 11-9 entitled
14 "Children" are hereby amended to read as follows:

15 **11-9-1.3. Child pornography prohibited.** -- (a) Violations. - It is a violation of this
16 section for any person to:

17 (1) Knowingly produce any child pornography;

18 (2) Knowingly mail, transport, deliver or transfer by any means, including by computer,
19 any child pornography;

1 (3) Knowingly reproduce any child pornography by any means, including the computer;

2 or

3 (4) Knowingly possess any book, magazine, periodical, film, videotape, computer disk,
4 computer file or any other material that contains an image of child pornography.

5 (b) Penalties.

6 (1) Whoever violates or attempts or conspires to violate subdivisions (a)(1), (a)(2) or
7 (a)(3) of this section shall be subject to a fine of not more than five thousand dollars (\$5,000), or
8 imprisoned for not more than fifteen (15) years, or both.

9 (2) Whoever violates or attempts or conspires to violate subdivision (a)(4) of this section
10 shall be subject to a fine of not more than five thousand dollars (\$5,000), or imprisoned not more
11 than five (5) years, or both.

12 (c) Definitions. - For purposes of this section:

13 (1) "Child pornography" ~~means any visual depiction including any photograph, film,~~
14 ~~video, picture or computer or computer-generated image or picture, whether made or produced by~~
15 ~~electronic, mechanical or other means of sexually explicit conduct where:~~

16 ~~(i) The production of the visual depiction involves the use of a minor engaging in~~
17 ~~sexually explicit conduct;~~

18 ~~(ii) The visual depiction is, or appears to be, of a minor engaging in sexually explicit~~
19 ~~conduct; or~~

20 ~~(iii) The visual depiction is advertised, promoted, presented, described or distributed in~~
21 ~~such a manner that conveys the impression that the material is or contains a visual depiction of a~~
22 ~~minor engaging in sexually explicit conduct;~~ means any visual depiction, including any
23 photograph, film, video, picture, or computer or computer-generated image or picture, whether
24 made or produced by electronic, mechanical, or other means, of sexually explicit conduct where:

25 (i) The production of such visual depiction involves the use of a minor engaging in
26 sexually explicit conduct;

27 (ii) Such visual depiction is a digital image, computer image, or computer-generated
28 image of a minor engaging in sexually explicit conduct; or

29 (iii) Such visual depiction has been created, adapted, or modified to appear that an
30 identifiable minor is engaging in sexually explicit conduct.

31 (2) "Computer" has the meaning given to that term in section 11-52-1;

32 (3) "Minor" means any person not having reached eighteen (18) years of age;

33 (4) "Identifiable minor."

34 (A) means a person:

1 (i)(I) who was a minor at the time the visual depiction was created, adapted, or modified;
2 or
3 (II) whose image as a minor was used in creating, adapting, or modifying the visual
4 depiction; and
5 (ii) who is recognizable as an actual person by the person's face, likeness, or other
6 distinguishing characteristic, such as a unique birthmark or other recognizable feature; and
7 (B) shall not be construed to require proof of the actual identity of the identifiable minor.
8 ~~(4)~~(5) "Producing" means producing, directing, manufacturing, issuing, publishing or
9 advertising;
10 ~~(5)~~(6) "Sexually explicit conduct" means actual or simulated:
11 (i) ~~Sexual~~ Graphic sexual intercourse, including genital-genital, oral-genital, anal-
12 genital, or oral-anal, ~~whether between persons of the same or opposite sex~~ or lascivious sexual
13 intercourse where the genitals, breasts, or pubic area of any person is exhibited;
14 (ii) Bestiality;
15 (iii) Masturbation;
16 (iv) Sadistic or masochistic abuse; or
17 (v) ~~Lascivious~~ Graphic or lascivious exhibition of the genitals or pubic area of any
18 person;
19 ~~(6)~~(7) "Visual depiction" includes undeveloped film and videotape and data stored on a
20 computer disk or by electronic means, which is capable of conversion into a visual image-;
21 (8) "Graphic," when used with respect to a depiction of sexually explicit conduct, means
22 that a viewer can observe any part of the genitals or pubic area of any depicted person or animal
23 during any part of the time that the sexually explicit conduct is being depicted;
24 (9) "Indistinguishable," when used with respect to a depiction, means that the depiction is
25 such that an ordinary person viewing the depiction would conclude that the depiction is of a
26 minor engaged in sexually explicit conduct. This definition does not apply to depictions that are
27 drawings, cartoons, sculptures, or paintings depicting minors or adults.
28 (d) Affirmative defenses.
29 (1) It shall be an affirmative defense to a charge of violating subdivision (a)(1), (a)(2), or
30 (a)(3) of this section that:
31 (i) The alleged child pornography was produced using an actual person or persons
32 engaging in sexually explicit conduct; and
33 (ii) Each such person was an adult at the time the material was produced; and
34 (iii) The defendant did not advertise, promote, present, describe or distribute the material

1 in such a manner as to convey the impression that it is or contains a visual depiction of a minor
2 engaging in sexually explicit conduct.

3 (2) It shall be an affirmative defense to a charge of violating subdivision (a)(4) of this
4 section that the defendant:

5 (i) Possessed less than three (3) images of child pornography; and

6 (ii) Promptly and in good faith and without retaining or allowing any person, other than a
7 law enforcement agency, to access any image or copy of it:

8 (A) Took reasonable steps to destroy each such image; or

9 (B) Reported the matter to a law enforcement agency and afforded that agency access to
10 each such image.

11 (e) Severability. - If any provision or provisions of this section, or the application of this
12 section to any person or circumstance is held invalid by a court of competent authority, that
13 invalidity does not affect other provisions or applications of this section which can be given effect
14 without that invalid provision or provisions or application of the provision or provisions, and to
15 this end the provisions of this section are declared to be separable and severable.

16 **11-9-9. Powers of family court.** -- Where in sections 11-9-1 -- 11-9-8 any authority is
17 vested in any court, the authority vested in the court or courts mentioned is transferred to the
18 family court. The family court shall have exclusive original jurisdiction over any and all
19 complaints and offenses set forth in sections 11-9-1 -- 11-9-8, 11-9-12, 11-9-14, and 11-9-15, and
20 shall have the authority to impose sentence as set forth in chapter 1 of title 14. [Notwithstanding](#)
21 [the provisions of this section, jurisdiction for violations of sections 11-9-1, 11-9-1.1, 11-9-1.2 and](#)
22 [11-9-1.3 shall be vested in the superior court.](#)

23 SECTION 3. This act shall take effect upon passage.

=====
LC02030/SUB A/2
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO CRIMINAL OFFENSES -- CHILDREN

- 1 This act would change the definition of child pornography and make illegal the indecent
- 2 solicitation of a child.
- 3 This act would take effect upon passage.

=====
LC02030/SUB A/2
=====

