

9.29

Definition Of Child Pornography

A person commits the offense of child pornography when he [1] [([(films) (videotapes) (photographs) (depicts) (portrays)] by any means of visual medium or reproduction) (depicts by computer)] any [(child he knows or reasonably should know to be under the age of 18) (institutionalized severely or profoundly mentally retarded person)] where such [(child) (institutionalized severely or profoundly mentally retarded person)] is:

[a] actually or by simulation engaged in any act of sexual intercourse with any [(person) (animal)].

[or]

[b] actually or by simulation engaged in any act of sexual contact involving the sex organs of the [(child) (institutionalized severely or profoundly mentally retarded person)] and the [(mouth) (anus) (sex organs)] of another [(person) (animal)].

[or]

[c] actually or by simulation engaged in any act of sexual contact involving the [(mouth) (anus) (sex organs)] of the [(child) (institutionalized severely or profoundly mentally retarded person)] and the sex organs of another [(person) (animal)].

[or]

[d] actually or by simulation engaged in any act of masturbation.

[or]

[e] actually or by simulation portrayed as [(being the object of) (otherwise engaged in)] any act of lewd [(fondling) (touching) (caressing)] involving another [(person) (animal)].

[or]

[f] actually or by simulation engaged in any act of [(excretion) (urination)] within a sexual context.

[or]

[g] actually or by simulation [(portrayed) (depicted)] as [(bound) (fettered) (subject to sadistic abuse) (subject to masochistic abuse) (subject to sadomasochistic abuse)] in any sexual context.

[or]

[h] [(depicted) (portrayed)] in any [(pose) (posture) (setting)] involving a lewd exhibition of the [(unclothed genitals) (pubic area) (buttocks) (a fully or partially developed breast)] of the [(child) (other person)] [if the [(child) (other person)] is a female].

[or]

[2] with the knowledge of the [(nature) (content)] thereof, [(reproduces) (disseminates) (offers to disseminate) (exhibits) (possesses with the intent to disseminate)] any [(film) (videotape) (photograph) (depiction by computer) [or other similar visual reproduction]] of any [(child) (institutionalized severely or profoundly mentally retarded person)] whom the person knows or reasonably should know to be [(under the age of 18) (an institutionalized severely or profoundly mentally retarded person)] engaged in _____.

[or]

[3] with knowledge of the [(subject matter) (theme)] thereof, produces any [(stage play) (live performance) (film) (videotape) (depiction by computer) [or other similar visual portrayal]] which includes [(a child whom the person knows or reasonably should know to be under the age of 18) (an institutionalized severely or profoundly mentally retarded person)] engaged in _____.

[or]

[4] [(solicits) (uses) (persuades) (induces) (entices) (coerces)] any [(child whom he knows or reasonably should know to be under the age of 18) (institutionalized severely or profoundly mentally retarded person)] to appear in any [(stage play) (live presentation) (film) (videotape) (photograph) (depiction by computer) [or other similar visual reproduction]] in which the [(child) (institutionalized severely or profoundly mentally retarded person)] [(is) (will be depicted, actually,) (will be depicted, by simulation,)] in _____.

[or]

[5] is a [(parent) (step-parent) (legal guardian) (other person having care or custody)] of [(a child whom the person knows or reasonably should know to be under the age of 18) (an institutionalized severely or profoundly mentally retarded person)] and who knowingly [(permits) (induces) (promotes) (arranges for)] such [(child) (institutionalized severely or profoundly mentally retarded person)] to appear in any [(stage play) (live performance) (film) (videotape) (photograph) (depiction by computer) [or other similar visual presentation, portrayal, or simulation]] in which ____.

[or]

[6] with the knowledge of the [(nature) (content)] thereof, possesses any [(film) (videotape) (photograph) (depiction by computer) [or other similar visual reproduction]] of any [(child) (institutionalized severely or profoundly mentally retarded person)] whom the person knows or reasonably should know to be [(under the age of 18) (an institutionalized severely or profoundly mentally retarded person)] engaged in ____.

[or]

[7] [(solicits) (uses) (persuades) (induces) (entices) (coerces)] a person to provide any [(child under the age of 18) (institutionalized severely or profoundly mentally retarded person)] to appear in any [(stage play) (live presentation) (film) (videotape) (photograph) (depiction by computer) [or other similar visual reproduction]] in which the [(child) (institutionalized severely or profoundly mentally retarded person)] will be depicted, actually or by simulation, in ____.

Committee Note

720 ILCS 5/11-20.1(a) (West 1994) (formerly Ill.Rev.Stat. ch. 38, §11-20.1(a) (1991)), amended by P.A. 84-1029, effective November 18, 1985; P.A. 85-1392, effective January 1, 1989; P.A. 85-1440, effective February 1, 1989; P.A. 85-1447, effective January 1, 1990; P.A. 86-820, effective January 1, 1990; P.A. 86-1168, effective January 1, 1991; P.A. 87-1069, effective January 1, 1993; and P.A. 88-680, effective January 1, 1995.

When paragraphs [2], [3], [4], [5], [6], or [7] are used, the applicable subparagraph or subparagraphs [a] through [h] of paragraph [1] must be included where the blank appears.

When applicable, give Instruction 11.65G, defining the phrase “institutionalized severely or profoundly mentally retarded person.”

When applicable, give the definitions of the terms “disseminate,” “produce,” “reproduce,” “depict by computer,” and “depiction by computer” as set forth in Instruction 9.29B. If the definition of “computer,” “computer program,” or “data” becomes an issue, see 720 ILCS 5/16D-2 (West 1994) (formerly Ill.Rev.Stat. ch. 38, §16D-2 (1991)).

When applicable, give Instruction 9.01A, defining the words “solicits” and “solicitation.”

Sections 11-20.1(b)(1), (b)(2), and (b)(3) provide affirmative defenses to the offense of child pornography which are set forth in Instruction 9.29A.

Section 11-20.1(b)(4) provides a presumption that under certain circumstances, the defendant possessed child pornography with the intent to disseminate. This presumption is set forth in Instruction 9.29C.

Use applicable paragraphs and bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.