SPONSOR: Rep. Longhurst & Sen. Poore
Reps. Briggs King, Heffernan, K. Johnson, Mitchell, Osienski, Smyk, K. Williams; Sens. Bonini, Brown, Ennis, Gay, Hansen, Hocker, Lawson, Lockman, Lopez, Mantzavinos, S. McBride, Paradee, Pettyjohn, Pinkney, Richardson, Sokola, Sturgeon, Townsend, Walsh, Wilson

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 428

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO OFFENSES RELATING TO CHILDREN.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 5, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 1100. Definitions relating to children.

When used in this subchapter:

(7) "Prohibited sexual act" shall include:

a. Sexual intercourse;

b. Anal intercourse;

c. Masturbation;

d. Bestiality;

e. Sadism;

f. Masochism;

g. Fellatio;

h. Cunnilingus;

i. Nudity, if such nudity is to be depicted for the purpose of the sexual stimulation or the sexual gratification of any individual who may view such depiction;

<u>j. Partial nudity, if the child in the image depicted is all of the following:</u>

<u>1. Scantily clothed.</u>

<u>2. Posed provocatively, or otherwise posed in a fashion obviously intended to arouse even though genitalia is not blatantly displayed.</u>

<u>3. Is intended for the purpose of the sexual stimulation or the sexual gratification of any individual who may view such depiction.</u>

~~j.~~ k. Sexual contact;

~~k.~~ l. Lascivious exhibition of the genitals or pubic area of any child;

~~l.~~ m. Any other act which is intended to be a depiction or simulation of any act described in this paragraph.

§ 1108. Sexual exploitation of a child; class D and B felony.

A person is guilty of sexual exploitation of a child when:

(1) The person knowingly, photographs or films a child engaging in a prohibited sexual act or in the simulation of such an act, or otherwise knowingly creates a visual depiction of a child engaging in a prohibited sexual act or in the simulation of such an act; or

(2) The person knowingly, finances or produces any motion picture, video or other visual depiction of a child engaging in a prohibited sexual act or in the simulation of such an act; or

(3) The person knowingly publishes or makes available for public distribution or sale by any means, including but not limited to computer, any book, magazine, periodical, pamphlet, photograph, Internet site or web page which depicts a child engaging in a prohibited sexual act or in the simulation of such an act, or knowingly publishes or makes available for public distribution or sale by any means, including computer, any other visual depiction of a child engaging in a prohibited sexual act or in the simulation of such an act; or

(4) The person permits, causes, promotes, facilitates, finances, produces or otherwise advances an exhibition, display or performances of a child engaging in a prohibited sexual act or the simulation of such an act.

Sexual exploitation of a child is a class B felony unless the prohibited sex act is partial nudity as defined in § 1100 of this title, then it is a class D felony.

§ 1109. Dealing in child pornography; class B felony.

A person is guilty of dealing in child pornography when:

(1) The person knowingly ships, transmits, mails or transports by any means, including by computer or any other electronic or digital method, any book, magazine, periodical, pamphlet, video or film depicting a child engaging in a prohibited sexual act or in the simulation of such an act, or knowingly ships, transmits, mails or transports by any means, including by computer or any other electronic or digital method, any other visual depiction of a child engaging in a prohibited sexual act or in the simulation of such an act;

(2) The person knowingly receives for the purpose of selling or sells any magazine, photograph or film which depicts a child engaging in a prohibited sexual act or in the simulation of such an act, or knowingly receives for the purpose of selling or sells any other visual depiction of a child engaging in a prohibited sexual act or in the simulation of such an act;

(3) The person knowingly distributes or disseminates, by means of computer or any other electronic or digital method, or by shows or viewings, any motion picture, video or other visual depiction of a child engaging in a prohibited sexual act or the simulation of such an act. The possession or showing of such motion pictures shall create a rebuttable presumption of ownership thereof for the purposes of distribution or dissemination;

(4) The person, intentionally compiles, enters, accesses, transmits, receives, exchanges, disseminates, stores, makes, prints, reproduces or otherwise possesses any photograph, image, file, data or other visual depiction of a child engaging in a prohibited sexual act or in the simulation of such an act. For the purposes of this subsection, conduct occurring outside the State shall be sufficient to constitute this offense if such conduct is within the terms of § 204 of this title, or if such photograph, image, file or data was compiled, entered, accessed, transmitted, received, exchanged, disseminated, stored, made, printed, reproduced or otherwise possessed by, through or with any computer located within Delaware and the person was aware of circumstances which rendered the presence of such computer within Delaware a reasonable possibility; or

(5) The person knowingly advertises, promotes, presents, describes, transmits or distributes any visual depiction, exhibition, display or performance with intent to create or convey the impression that such visual depiction, exhibition, display or performance is or contains a depiction of a child engaging in a prohibited sexual act or in the simulation of such an act.

Unlawfully dealing in child pornography is a class B felony <u>unless the prohibited sex act is partial nudity as defined in § 1100 of this title, then it is a class D felony</u>.

§ 1110. Subsequent convictions of § 1108 or § 1109 of this title.

Any person convicted of <u>a class B felony</u> under § 1109 of this title who is convicted of a second or subsequent violation of that section shall, upon such second or subsequent conviction, be guilty of a class B felony. Any person convicted of <u>a class B felony</u> under § 1108 of this title who is convicted of a second or subsequent violation of that section shall, upon such second or subsequent conviction, be sentenced to life imprisonment.

<u>Ssynopsis</u>

All too often, persons who produce or transmit images of partially nude children cannot be prosecuted under our current statutes because our current statutes only criminalize images of a child engaging in a sexual act or if the child is nude. This bill seeks to remedy this problem by adding "partial nudity" to the definition of "prohibited sexual act". By doing so, this bill criminalizes the photographing or filming of a partially nude child as well as the production, publication, transmission, selling, distribution, and dissemination of photographs or images of partially nude children if the child in such image or photograph is scantily clothed, posed provocatively, or otherwise posed with the obvious intent to arose, and such image of photograph is intended for the purpose of sexual stimulation or gratification of any individual who may view such image or photograph. Under this bill, such crime would be a class D felony punishable by up to an 8-year jail sentence.