

Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENTS TO
FIRST ENGROSSMENT**

ENGROSSED SENATE BILL NO. 2307

Introduced by

Senators Boehm, Erbele, Hogue, Weston

Representatives Steiner, Tveit

1 A BILL for an Act to create and enact a new subsection to section 12.1-27.1-01 and two new
2 sections to chapter 12.1-27.1 of the North Dakota Century Code, relating to the definition of a
3 public library, required safety policies and technology protection measures, and the state's
4 attorney's review of public libraries, school districts, and state agencies for compliance with
5 statutes protecting minors from explicit sexual material; to amend and reenact subsection 5 of
6 section 12.1-27.1-01, subsection 2 of section 12.1-27.1-03.1, and sections 12.1-27.1-03.5 and
7 12.1-27.1-11 of the North Dakota Century Code, relating to obscenity control; to provide for a
8 report to the legislative management; and to provide a penalty.

9 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

10 **SECTION 1. AMENDMENT.** Subsection 5 of section 12.1-27.1-01 of the North Dakota
11 Century Code is amended and reenacted as follows:

- 12 5. As used in this chapter, the terms "obscene material" and "obscene performance"
13 mean material or a performance which:
- 14 a. Taken as a whole, the average person, applying contemporary North Dakota
15 standards, would find predominantly appeals to a prurient interest;
 - 16 b. Depicts or describes in a patently offensive manner sexual conduct, whether
17 normal or perverted; and
 - 18 c. Taken as a whole, the reasonable person would find lacking in serious literary,
19 artistic, political, or scientific value.

1 Whether material or a performance is obscene must be judged with reference to
2 ordinary reasonable adults, unless it appears from the character of the material or the
3 circumstances of its dissemination that the material or performance is designed for
4 minors or other specially susceptible audience, in which case the material or
5 performance must be judged with reference to that type of audience.

6 **SECTION 2.** A new subsection to section 12.1-27.1-01 of the North Dakota Century Code is
7 created and enacted as follows:

8 As used in this chapter, the term "public library" means a library containing collections
9 of books or periodicals or both for the general population to read, borrow, or refer to
10 which is supported with funds derived from taxation.

11 **SECTION 3. AMENDMENT.** Subsection 2 of section 12.1-27.1-03.1 of the North Dakota
12 Century Code is amended and reenacted as follows:

13 2. As used in this section:

- 14 a. "Nude or partially denuded human figures" means less than completely and
15 opaquely covered human genitals, pubic regions, female breasts or a female
16 breast, if the breast or breasts are exposed below a point immediately above the
17 top of the areola, or human buttocks; and includes human male genitals in a
18 discernibly turgid state even if completely and opaquely covered.
- 19 b. "Where minors are or may be invited as a part of the general public" includes any
20 public roadway ~~or~~, public walkway, public library, or public school library.
- 21 c. The above ~~shall~~may not be construed to include a ~~bona fide school~~, college,
22 university, museum, ~~public library~~, or art gallery.

23 **SECTION 4. AMENDMENT.** Section 12.1-27.1-03.5 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **12.1-27.1-03.5. Public libraries and school districts prohibited from maintaining**
26 **explicit sexual material - Report.**

27 1. As used in this section:

- 28 a. "Explicit sexual material" means any material which:
- 29 (1) Taken as a whole, appeals to the prurient interest of minors;
- 30 (2) Is patently offensive to prevailing standards in the adult community in North
31 Dakota as a whole with respect to what is suitable material for minors; and

- 1 (3) Taken as a whole, lacks serious literary, artistic, political, or scientific value
2 for minors.
- 3 b. "Public library" means a library established under chapter 40-38.
- 4 c. "School district" includes a school library or classroom library under the control of
5 the school district.
- 6 2. A public library or a school district may not maintain in its ~~children's collection~~
7 ~~inventory books~~ an area easily accessible to minors ~~that contain~~ explicit sexual
8 material.
- 9 3. By January 1, ~~2024~~2026, each public library and school district shall develop a policy
10 and process for reviewing library collections to ensure conformance with the
11 requirements of this section. The policy must include a procedure:
- 12 a. For the ~~removal or~~ relocation of explicit sexual material in the ~~public~~a library to an
13 area in the library not easily accessible to minors;
- 14 b. For the development of a book and media collection that is appropriate for the
15 age and maturity levels of the individuals who may access the materials, and
16 which is suitable for, and consistent with, the purpose of the library or school
17 district;
- 18 c. For the ~~public library to receive, evaluate, and respond to~~relocation of materials
19 to an area not easily accessible to minors, upon a request from an individual
20 ~~regarding the removal or relocation of~~to relocate ~~one or more of the books or~~
21 ~~other materials in the library collection containing~~ explicit sexual material in the
22 library collection; and
- 23 d. For the activation of a diverse decisionmaking committee to reconsider the
24 relocation of explicit sexual material in the library collection, if the individual is
25 unsatisfied with the result under subdivision c;
- 26 e. To refer an individual to section 7 of this Act, if the individual is unsatisfied with
27 the result of the reconsideration under subdivision d; and
- 28 f. To periodically review the library collection to ensure ~~the library collection does~~
29 ~~not contain explicit sexual material in the children's collection~~compliance with this
30 section.

1 4. Each public library and school district shall provide a compliance report to the
2 legislative management before May 1, ~~2024~~2026, on the implementation of collection
3 development and relocation of materials policies as required by this section and to
4 ensure sufficient compliance with this section.

5 **SECTION 5. AMENDMENT.** Section 12.1-27.1-11 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **12.1-27.1-11. Exceptions to criminal liability.**

8 Sections 12.1-27.1-01 and 12.1-27.1-03 ~~shall~~may not apply to the possession or distribution
9 of material in the course of law enforcement, judicial, or legislative activities; or to the
10 possession of material by a ~~bona fide school~~, college, university, museum, or public library for
11 limited access for educational research purposes carried on at ~~such an~~the institution by adults
12 only. Sections 12.1-27.1-01 and 12.1-27.1-03 ~~shall also~~may not apply to a person who is
13 returning material, found to be obscene, to the distributor or publisher initially delivering it to the
14 person returning it.

15 **SECTION 6.** A new section to chapter 12.1-27.1 of the North Dakota Century Code is
16 created and enacted as follows:

17 **Safety policies and technology protection measures required - Report.**

18 1. As used in this section:

19 a. "Explicit sexual material" means the term as defined under section
20 12.1-27.1-03.5.

21 b. "Public library" does not include the state library.

22 c. "State agency" does not include the state library or institutions of higher
23 education.

24 2. A school district, state agency, or public library may offer digital or online library
25 database resources to students in kindergarten through grade twelve if the person
26 providing the resources verifies all the resources comply with subsection 3.

27 3. Digital or online library database resources offered by a school district, state agency,
28 or public library to students in kindergarten through grade twelve must have safety
29 policies and technology protection measures that:

- 1 a. Prohibit and prevent a user of the resource from sending, receiving, viewing, or
2 downloading materials constituting an obscene performance or explicit sexual
3 material; and
- 4 b. Filter or block access to explicit sexual material.
- 5 4. Notwithstanding any contract provision, if a provider of digital or online library
6 resources fails to comply with subsection 3, the school district, state agency, or public
7 library shall withhold any further payments to the provider pending verification of
8 compliance.
- 9 5. If a provider of digital or online library database resources fails to timely verify the
10 provider is in compliance with the safety policies and requirements of subsection 3, the
11 school district, state agency, or public library shall consider the provider's act of
12 noncompliance a breach of contract.
- 13 6. A public school library and a public library shall submit an aggregate written report to
14 the legislative management no later than December first of each year regarding any:
 - 15 a. Issues related to provider compliance with technology protection measures
16 required by subsection 3; and
 - 17 b. Incidents of complaints regarding accessible materials.
- 18 7. By January 1, 2026, each school district, state agency, or public library offering digital
19 or online library database resources to students in kindergarten through grade twelve
20 shall develop a policy and process for reviewing digital or online library database
21 resources to ensure conformance with this section. The policy must include a
22 procedure:
 - 23 a. For an individual to report to the school district, state agency, or public library
24 materials containing explicit sexual material or an obscene performance in the
25 digital or online library database resources;
 - 26 b. Upon receipt of a report under subdivision a, for the school district, state agency,
27 or public library, to provide the report to the provider of digital or online library
28 database resources and apprise the individual of the actions taken to comply with
29 this section; and

- 1 c. To refer an individual to section 7 of this Act, if the individual believes this section
2 is being violated after being apprised of the actions taken to comply with the
3 section.

4 **SECTION 7.** A new section to chapter 12.1-27.1 of the North Dakota Century Code is
5 created and enacted as follows:

6 **State's attorney - Obscenity review procedure - School districts - State agencies -**
7 **Public libraries - Penalty.**

- 8 1. Any interested individual who has exhausted the procedures under section
9 12.1-27.1-03.5 or section 6 of this Act may request, in the manner prescribed by the
10 local state's attorney, the local state's attorney's opinion to review an alleged violation
11 under section 12.1-27.1-03.5 or section 6 of this Act. Within sixty days of receiving the
12 request, the state's attorney shall issue an opinion on the alleged violation to the
13 interested individual, the provider of digital or online library database resources, if any,
14 and the school district, state agency, or public library under review.
- 15 2. If the state's attorney determines a public library or state agency has violated section
16 12.1-27.1-03.5 or section 6 of this Act, the state's attorney shall defer any prosecution
17 and notify the public library or state agency. After receiving notice, the public library or
18 state agency shall take corrective action to comply with the violated law within
19 ten days. If the public library or state agency fails to comply with the law within
20 ten days, the state's attorney:
- 21 a. Shall notify the state treasurer who shall withhold and return funds allocated to
22 the state agency or public library, until the state's attorney has determined the
23 state agency or public library is in compliance with the relevant statute and has
24 notified the state treasurer accordingly; and
- 25 b. May prosecute for failure to comply with the law.
- 26 3. If the state's attorney determines a school district has violated section 12.1-27.1-03.5
27 or section 6 of this Act, the state's attorney shall defer any prosecution and notify the
28 school district. After receiving notice, the school district shall take corrective action to
29 comply with the violated law within ten days. If the school district fails to comply with
30 the law within ten days, the state's attorney:

- 1 a. Shall notify the superintendent of public instruction who shall withhold funds
- 2 allocated to the school district until the state's attorney has determined the ~~state-~~
- 3 ~~agency or public library~~ school district is in compliance with the relevant statute
- 4 and has notified the superintendent of public instruction accordingly; and
- 5 b. May prosecute for failure to comply with the law.