

69<sup>th</sup> Legislative Assembly  
SECOND ENGROSSED SB 2307  
April 10, 2025  
House Appropriations, Roughrider Room

Mr. Chairman and Committee members:

I was at the House Judiciary Committee hearing for Senate Bill 2307 to testify on behalf of the North Dakota State's Attorneys' Association. Due to time constraints, I was unable to voice their concerns, and the bill was passed out of Judiciary the same day. I wanted the State's Attorneys concerns to be a part of the record, so appear here to provide you my testimony.

The state's attorneys are concerned with SB 2307 for two main reasons: one, the methods for referring a violation to their offices are inconsistent with the current requirements for all other crimes; two, how the Bill is currently written would prohibit a state's attorney from ethically prosecuting any perpetrator of this crime as the state's attorney themselves would become a witness to the case initially.

First, state's attorneys do not initiate investigations for crimes on their own. Citizens report any violations of law to local law enforcement who then investigate the allegations, and if they believe a crime has occurred, they will then forward the information to the state's attorney for review of possible charges. This is how the current law for this offense is written. This Bill, however, circumvents law enforcements' investigation of the offense and brings it straight to the state's attorney for issuing a factual opinion on the legitimacy of the claim and potentially issuing a letter to the library and state treasurer for punitive sanctions if the offense isn't remedied.

This is not only inconsistent with state law, but it brings up the second biggest issue with this Bill which is that a prosecutor who notifies the public library or state agency of any violation will have then made a factual determination that a violation occurred. If the state's attorney did that, they would become a fact witness in the case and would be prohibited under their Rules of Professional Conduct from subsequently prosecuting any offender as they cannot prosecute a case they are a witness in. With that, every small county in North Dakota (i.e. most of them) would have to engage and hire a neighboring prosecutor to prosecute any violations so they themselves could testify that they issued the initial opinion that there was a violation. As this is an unfunded mandate, this obviously puts a huge burden on not only all of the state's attorneys' offices, but especially those who only have one attorney in their office.

In summary, the process that SB 2307 puts in place sounds something like a Monty Python skit or Jim Carey movie:

Mr. Byers: Your honor, I call myself, the investigator, to the stand.

The Judge: Very well.

Mr Byers: Did you, sir, investigate the library and find that obscene materials were in a place easily accessible to minors?

Mr. Byers: (answering himself) Yes, I did. Minors could sure find them without any trouble.  
(Mr. Byers leaves the stand)

Mr. Byers: Your honor, I now call myself as an expert witness in the case.

The Judge: Very unusual, but let's see where this goes. (Mr. Byers returns to the stand)

Mr. Byers: Sir, given your vast expertise in obscenity, did you assess whether these materials meet the definition of obscene materials under contemporary North Dakota standards?

Mr. Byers: (answering himself) Yes, I did. They were totally perverted.

Mr. Byers: Sir, how much are you being paid for your expert testimony?

Mr. Byers: (answering himself) Not a dime. The state legislature determined I should be an investigator, expert witness, and prosecutor for no extra pay. (Mr. Byers gets back off the stand)

Mr. Byers: Your honor, I want the Court to take judicial notice that I sent notice to the public library of this expert's determination, and they failed to remedy the situation. I then notified the state treasurer, who had no choice but to suspend all funding for the library. So unless you intend to send the librarian to jail, we've already taken care of the sentencing aspect.

The Judge: Well, well. Thank you for taking care of my job as well.

Senate Bill 2307 requires the State's Attorney to wear too many hats. Keeping the current law in place makes more sense as it allows a complaint to be made to law enforcement, investigated by law enforcement, and then prosecuted by the state's attorney. As pertains to your role in approving the funding required by this bill, it is an unfunded mandate, placing numerous additional duties on the State's Attorney with no funding provided to them.

On behalf of the North Dakota State's Attorneys' Association, I strongly urge you to issue a do not pass on this Bill as currently written.

Jonathan Byers  
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North Dakota State's Attorneys Association