

## **House Bills 1351- Computer-generated Images**

### **House Judiciary Committee**

**January 20, 2025**

**Submitted by: Anna Frissell**

Honorable Chairman, distinguished members of the Judiciary Committee, North Dakota House of Representatives, thank you for the opportunity to testify today. My name is Anna Frissell and I am a board member of the Children's Advocacy Centers of North Dakota, as well as, a member of the Legislative Task Force for the Prevention of Child Sexual Abuse. I am also a past Executive Director of a North Dakota Children's Advocacy Center and a prosecutor in North Dakota and Minnesota. I wish to note my support for criminalizing the production, possession, distribution, promotion, etc., of certain computer-generated images depicting minors engaged in sexual conduct or a sexual performance.

After drafting House Bill 1351, Representative Satrom welcomed a discussion about this Bill, including a chance to voice concerns. The Bill had been submitted when I raised the below issues, but I understood that he was very interested in considering these concerns and others through robust testimony on the Bill.

House Bill 1351 carries a penalty of an A misdemeanor. Presently, 12.1-27.2-04.1, NDCC, Possession of Certain Materials Prohibited, carries a C Felony. I opine that this new "deep fake" statute should also be a C Felony, if not for the first conviction of an individual, then certainly for the second or third.

Likewise, I also feel that the categories of uses offered an affirmative defense in House Bill 1351 are not appropriate. These categories include literary, artistic, political, scientific, etc. Granted, the affirmative defense language mirrors present NDCC statutes (See for instance, 12.1-27.2-05, NDCC, Sexual Performance of a Minor) but I offer that these affirmative defenses should not be available for any of the crimes involving sexual conduct or sexual performance of minors, and certainly not for "deep fakes".

I do not believe that there is a situation where a person or entity should have an affirmative defense to these allegations when they are accused of having produced, possessed, distributed, promoted, advertised, selling, exhibiting, broadcasting or transmitting:

**...a video recording, motion picture, electronic image or photograph created with the intent to deceive which appears to depict a minor engaging in sexual conduct or a sexual performance that did not occur in reality or that the minor did not actually perform, and whose appearance in it is the result of digitalization.**

House Bill 1351 contemplates that these may be minors who are “identifiable” (See Section 1(4)) of House Bill 1351. Again, I cannot contemplate a situation where there should be an affirmative defense to these allegations if you have an identifiable minor in a “deep fake”.

Also, it is wrong for an identifiable minor to continue to be victimized by using these images for any of the purposes listed (literary, artistic, political, etc.) and at the very least the use of them should never be allowed without the express and written permission of the minor and their parent or guardian.

I understand that there may be situations where law enforcement or the criminal justice system will use the image, but if they require an affirmative defense and it is going to be specified in the statute, the list to whom it is available should be very limited.

The above testimony is asking for changes to a very important Bill, not questioning the need for the Bill. The need to legislate and criminalize this behavior is of paramount importance.

Thank you for the opportunity to submit testimony. Please contact me if I can be of further assistance.

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