

House Bill 1410

House Judiciary Committee

11:30 a.m., January 20, 2025

Submitted by: Anna Frissell

Introduction

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 am here to testify in support of House Bill 1410.

Background

While doing the work of the Children's Advocacy Centers (CACs) and the Prevention of Child Sexual Abuse Task Force, we often consider the impact of laws and policies on child victims of abuse; physical, sexual and neglect. The Task Force was charged with developing and implementing a comprehensive statewide approach to the prevention of child sexual abuse. The Task Force, with the help of our legislative representatives, Senator Clemens and Representatives Schneider and Satrom, and the Director of the Task Force, Lindsey Burkhardt, has accomplished much. Those accomplishments are well-documented on the Task Force website (ndstopcsa.com) and in its ongoing reports to this legislature.

The Task Force's work on prevention allowed us to develop and implement strategies, focusing on primary prevention first, but recognizing that secondary and tertiary interventions are needed to provide meaningful prevention and protection. House Bill 1410 is a natural extension of the work of the Task Force as the bill offers the opportunity to address issues beyond prevention.

Likewise, from my service on the Children's Advocacy Centers of North Dakota Board of Directors, I know that the CACs are hyper-focused on identifying and supporting changes to the criminal justice, child welfare systems and other systems that enhance the protection of children and stop abuse.

Provisions of the Bill

Below please find key provisions of the proposed legislation and my understanding of the rationale behind each section:

Section 1

The request for a study of state laws relating to criminal conduct against children, child sexual assault and child physical abuse and neglect.

Section 2(a)

This provision seeks to remove the term “sexual performance” from the criminal code and replace it with the term “child sexually abusive material.” At our most recent Task Force meeting we agreed to ask that the Bill be amended to read, “The use of the term child sexually abusive material or other language deemed appropriate to describe child pornography or sexual conduct of a minor in Chapter 12.1-27.2, NDCC.

The rationale behind Section 2(a) is that the term “sexual performance” is outdated and offensive. “Sexual performance” used in Chapter 12.1-27.2, is defined as any performance which includes sexual conduct by a minor. The use of the word “performance” connotes a willing and voluntary act by the person involved or “performing”. To call a minor’s forced participation in a sexual act a “performance” is grossly wrong.

The term has been abandoned by some jurisdictions and replaced by the term “child pornography”, or more recently “child sexually abusive material”, or alternative terminology depending on the material or actions described.

When one looks at the criminal statutes to replace the term “sexual performance,” it poses some challenges as to using the same phrase for every replacement. Research into terminology and our statutes can be prepared and reviewed by the multi-disciplinary Legislative Management Study to determine the appropriate terminology for North Dakota law and replace this phrase in the criminal code.

Section 2(b)

This provision seeks to cause a review of state laws relating to the use of artificial intelligence in crimes relating to “sexual performance” of a minor or possession of prohibited materials.

This section of the bill involves the fast-changing landscape of artificial intelligence and its potential for victimization in ways we have never even imagined. The legislature has been presented with bills criminalizing the production, possession, distribution, promotion, etc. of sexually explicit “deep fake” videos. At least one of these bills adds to the section 12.1-27.1, Sexual Performance of a Minor and will underscore the need to change the use of the term, ‘sexual performance.’”

Section 2(b) also raises the issue of artificial intelligence in conjunction with possession of prohibited materials. 12.1-27.2-04.1, NDCC, is entitled, Possession of Certain Materials prohibited. This section makes it a C felony if one knows the character and content and knowingly possesses any motion picture, photograph or other visual representation that includes sexual conduct of a minor. This statute can be reviewed for consistency in penalty and language with the new “deep fake” statutes.

The Legislative Study Committee will look at the criminal code and the sexual performance statutes as well as other statutes, making recommendations that will address any new developments or inconsistencies in present law that will be noted or happen in the interim years as artificial intelligence evolves and changes the victimization of children. An attempt to keep up with the “bad guys”.

Section 2(c)

This section of the bill mandates that the Study Committee look at other laws (either changing existing North Dakota laws or recommending new laws) intended to protect children and which facilitate the investigation and prosecution of crimes involving child victims of sexual, and physical abuse and neglect.

The study will bring together a multi-disciplinary team of professionals with specialized knowledge in the investigation and prosecution of crimes involving child victims. Engagement with various stakeholders will offer diverse perspectives on improving the statutory framework for protecting children. This review could include not only the most commonly utilized statutes for sexual and physical abuse and neglect, but it could include the anti-human trafficking statutes and others as well.

The professionals on the Study Committee may include law enforcement, child protection, prosecutors, defense attorneys, judicial staff, Children Advocacy Center

staff, legislators, mental health professionals, guardian ad litem, prevention and medical personnel. This team will have an opportunity to make recommendations to the next legislative session for changes and additions to the law.

As I mentioned above, the Task Force for the Prevention of Child Sexual Abuse has worked since 2017 developing and implementing strategies, focusing on primary prevention first, but recognizing that secondary and tertiary interventions are needed to provide meaningful prevention and protection. This study is a natural next step in improving North Dakota's response to child victims.

Conclusion

In conclusion, the proposed legislation offers a pivotal opportunity to improve the response to child victims of sexual and physical abuse and neglect in North Dakota. I request the North Dakota House Judiciary Committee support House Bill 1410.

Thank you for your time and attention. I am available to answer any questions and provide further information, as needed.

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