

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1357

2007 HOUSE JUDICIARY

HB 1357

2007 HOUSE STANDING COMMITTEE MINUTES

Bill No. HB 1357

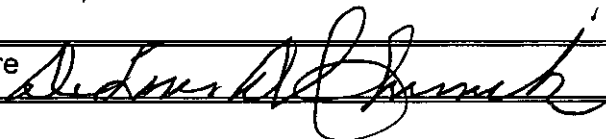
House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: January 30, 2007

Recorder Job Number: 2297, 2298

Committee Clerk Signature



Minutes:

Chairman DeKray: Opened the hearing on HB 1357.

Rep. Dahl: Explained the bill. This bill is a step toward protecting our children. It would appropriately punish those who victimize our children. (see attached testimony).

Jonathan Byers: Ass't Attorney General. (see attached testimony).

Rep. Lawrence Klemin You mentioned that federal penalties are greater than state penalties.

Jonathan Byers: The people who manufacturer or distribute child pornography in the federal system most commonly we receive a sentence of 12-15 years minimum. For possession of child pornography you will see them at least serve 3-5 years sentence. The maximum under ND law is one year. Even if the investigation has been done by state law enforcement officials or locals it frequently would be referred to the US Attorney's office for prosecution because of this.

Rep. Lawrence Klemin If they are sentenced in federal court they are using federal money. In the state court would it be state money?

Jonathan Byers: There would be that. Our resources are going to be used for prosecuting and housing defendants. It is a crime being committed against ND citizens and I feel it is appropriate to clean up our own ship.

Rep. Kim Koppelman: These folks are coming back on the street whether it is a year or in five years. What kind of intervention happens other than slapping their hands when they are convicted of this kind of crime?

Jonathan Byers: One of the other problems is we need the feds to do prosecution. I think they have added a couple more now, but for a long time, there was only one federal pen that had sex offender treatment. If we are leaving it up to that, they may not get the treatment that they need. If they are death with in state court; we have sex offender specialist to do the appropriate amount treatment. The governor also saw to it that the Department of Correction Field services got extra sex offender experts in field services to monitor the sex offenders. We have a lengthy list of probation conditions that apply to all defendants. For sex offenders they get a list of more conditions.

Rep. Kim Koppelman: How do you know, as an officer, when you discover something like this?

Jonathan Byers: One of the things I recommend is to take the images and take them to a child doctor. They use a tanner scale to age the children in the images.

Rep. Lawrence Klemin; what they do for second offense?

Jonathan Byers: It would still be a class C Felony for a second offense.

Aaron Birst: Association of Counties States Attorney Association: I have done a lot of these cases and in part that is why I am doing this job instead of that job. Why not have the feds do it? The feds are too busy and they look at high priority cases with allot of children involved. In Cass County it was a wake up call when the case that I did where a high school counselor who had a ton of child pornography on his computer. The feds did not take the case.

Clay County took the case. I did not take it because it was an A Misdemeanor for us and that drew allot of people out of the woodwork saying this was not right. The states association strongly supports this thank you to Rep. Dahl.

Rep. Chris Griffin It would be possible to have a crime of child pornography not be prosecuted because it was not serious.

Aaron Birst : the feds like to also pick on the cases that cross state lines. Technically they probably have jurisdiction in every case because if it is being transferred some how on a computer their statues are fairly board and gives them jurisdiction. They are more interested in the big cases and not the local people that are seen daily.

Rep. Lawrence Klemin Is there a lesser penalty included here?

Aaron Birst: I don't believe under the current drafting there would be like a lesser included in a child pornography case. My argument is if you don't feel you can prove child pornography, maybe you shouldn't be changing him then.

Rep. Lawrence Klemin: If there was a plea agreement, what would it be?

Aaron Birst: I would want them to plead guilty to the Class C felony. If that meant trying the case that would be worth it. I think every states attorney shares that.

Rep. Kim Koppelman Isn't there a mandatory supervisor after the release for sex offenders.

Aaron Birst: If you are convicted of a sex crime I don't believe so. Under the current legislation, if that would be passed there could be. Child pornography has not been the child offender category.

Opposition: None

Hearing closed.

Chairman DeKray: Reopened the hearing on HB 1357.

Do Pass Motion Made By Rep. Delmore Seconded By Rep. Kim Koppelman

Vote: **14** **Yes** **0** **No** **0** **Absent** **Carrier: Rep. Chris Griffin**

Date: 1-30-07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB1357

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do PASS

Motion Made By Rep. Delmore Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Meyer	✓	
Rep. Charging	✓		Rep. Onstad	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Griffin

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1357: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS
(14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1357 was placed on the
Eleventh order on the calendar.

2007 SENATE JUDICIARY

HB 1357

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1357

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: March 13, 2007

Recorder Job Number: 4958

Committee Clerk Signature *Mara L. Solley*

Minutes: Relating to the penalty for possession of materials that include sexual conduct by a minor.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following committee work:

Jonathan Byers, Assistant Attorney General introduced the bill and gave his testimony – Att.

#1.

Sen. Fiebiger questioned (meter 2:53) how long has the offence been a class A? He replied for several sessions and referred to a case. **Sen. Fiebiger** asked how many cases have been prosecuted and **Mr. Byers** replied there have been a few dozen cases of possession of child pornography and approx. half of a dozen of making or producing the porn. **Sen. Fiebiger** asked what MN and MT have done. **Jon** replied across the nation we are at the low end of the scale of penalty. **Sen. Olafson** asked again for a review of the penalty (meter 4:38)

Sen. Nelson requested the definition of "sexual conduct by a minor" (meter 5:09) in the beginning of the Child Pornography section 12.1-27.2. Her concern was a innocent picture of your child in a bathtub. Mr. Byers spoke of how perpetrators try to use "kids frolicking on a

beach" with the obvious intent not being innocent. Your family pictures would not meet the definition.

Sep Stacy Dahl, Dis. #42 spoke in support of the bill – Att. #2

Senator David Nething, Chairman closed the hearing.

Sen. Lyson made the motion to Do Pass HB 1357 and **Sen. Fiebiger** seconded the motion.

All members were in favor and the motion passes.

Carrier: **Sen. Olafson**

Senator David Nething, Chairman closed the hearing.

Roll Call Vote #

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1357

Senate	Judiciary	Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen. Lyson Seconded By Sen. Kiebigler

[illegible]

Total Yes 6 No 0

Absent *S*

Floor Assignment Sen. Olafson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1357: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1357 was placed on the
Fourteenth order on the calendar.

2007 TESTIMONY

HB 1357

Good Morning Mr. Chairman and Members of the House Judiciary Committee,

The lives of children exploited through child pornography are forever altered, not only by the molestation, but by the permanent record of the exploitation. HB 1357 is a step toward protecting our children, as it is a bill that upgrades the first offense of child pornography to a Class C felony from a Class A misdemeanor.

We in North Dakota are not immune from this form of child sexual exploitation, and it will take a concerted effort from government, law enforcement, and civil society to ensure that our children are protected. This is why this bill is before you, to propose legislation that appropriately punishes those who victimize some of our most helpless citizens. None of us can under-estimate the importance, or the urgency, of this threat against our kids.

Many images of child pornography depict actual sexual abuse of real children. Each image literally documents a crime scene. These are not just "pornographic" pictures or videos. These are the images of graphic sexual and physical abuse of children. This bill is one step in deterring those who would harm our most vulnerable citizens, our children; and to strengthen the penalties for those who aren't deterred. The conduct is brutal and the third-party enjoyment of such victimization is despicable; this bill appropriately punishes those who engage in this abhorrent conduct, and protects the most innocent victims from the most heinous of crimes.

**HOUSE BILL 1357 TESTIMONY
HOUSE JUDICIARY COMMITTEE
JANUARY 30th, 2007
PRAIRIE ROOM**

By Jonathan Byers, Assistant Attorney General

Mr. Chairman and Members of the Committee:

My name is Jonathan Byers and I appear on behalf of the Attorney General. I wish to testify in favor of House Bill 1357.

Even though I am a sex crimes prosecutor, I have only been involved in a few cases that involved child pornography. The penalties available in the federal system are more substantial; so much so that under current law it makes little sense to charge someone in state court.

I prosecuted one defendant in Cass County for a sexual offense against his daughter. As his supervised probation began, there were a number of red flags that things were not going well. I recommended that probation officers conduct a search of the defendant's home, and they discovered 150 computer discs filled with child pornography.

As I sat with a probation officer and BCI agent reviewing the discs to determine what evidence we had, I noticed that the children on the computer images were different ages, different genders, different sizes, and were from diverse ethnic backgrounds. One thing all of them had in common, however, is that they stared at the camera with haunted eyes.

For every other case I prosecute, I can do something about the abuse that is occurring. For a child pornography case, I realized there is nothing I can do stop the child in that image from being abused the very next day. And even though we may catch and remove possession of the image from one pedophile, there are thousands of other pedophiles trading that same image that we may never catch.

The haunted eyes still stare at me. The penalties for those find enjoyment in such horror need to be severe.

The Attorney General asks for a do pass. I would be happy to answer any questions.

Att #1
3-13-07

HOUSE BILL 1357 TESTIMONY
SENATE JUDICIARY COMMITTEE
MARCH 13TH, 2007
FORT LINCOLN ROOM

By Jonathan Byers, Assistant Attorney General

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AA # 2

3-13-07

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