

**2015 SENATE JUDICIARY**

**SB 2266**

# 2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee  
Fort Lincoln Room, State Capitol

SB 2266  
2/3/2015  
23076

- Subcommittee  
 Conference Committee

Committee Clerk Signature 

Minutes:

1

Ch. Hogue: We will open the hearing on SB 2266.

Sen. Jessica Unruh: Sponsor, support (see attached 1).

Ch. Hogue: Thank you. Further testimony in support.

Jonathan Byers, Asst. Attorney General: Support the increased penalties for child pornography offenses, human trafficking. My testimony mirrors that of Sen. Unruh. We not only want to address the problem of human trafficking and trading in child pornography that this bill addresses. While we are doing that, it would be nice to get a better grade from some of the national organizations that score ND on our statutory scheme is in addressing human trafficking. This bill will help with that. This is a companion bill to the Uniform law on human trafficking and a couple of those national organizations suggest an increase in the penalties, so we addressed that here in this bill. Current provision that relates to an affirmative defense lets the perpetrator or someone that is either possessing child pornography or is manufacturing child pornography. It gives them an affirmative defense that the victim was a minor totally. So even if this child is 13 years old, that's contained in the child pornography. They get to make the argument that they thought the person was an adult. If this bill passes, they would only be able to do that if the victim is 15-17, which is a much more believable age class to make that affirmative defense.

Sen. C. Nelson: What's obscene to some is not obscene to others. Where is the fine line?

Jonathan Byers: Even the courts have had a problem defining that; in fact, there is a famous quote from our US Supreme Court justices that says, "I'll know it when I see it". It is difficult to define. There are two separate provisions here. One that is non-obscene child pornography and it's hard to imagine that there is such a thing, that's contained in section 4. Section 3 addresses what our statutory reference refers to obscene child pornography. Either way, it's a crime.

Sen. C. Nelson: The reason I'm asking this is because these young people here from high schools. High schools put on musicals and sometimes musicals have cabaret movements and not fully clothes. Some people get really upset with that and others don't. I know that the directors have had problems with choosing proper plays.

Jonathan Byers: I would say that what you don't have in front of you is the very first section of the child pornography statute. In the definitions and in the definitions it spells out more what sexual performance is? The requirements are that it be lewd exhibition of the genitals which a play would not be, or simulated or real sexual acts involving a minor.

Ch. Hogue: Page 3, line 2 of the bill, it says the minor was in fact 15-17 years of age. Why do we have to provide a range why can't we just say 15 or older.

Jonathan Byers: That phrasing in the language, I believe I pulled directly from the statutory provision that applies to all hands-on sexual offenses. We could have said a minor, 15 year of age or older. ND statute does use that language as well.

Sen. C. Nelson: With that language if you say 15 to 17, what happens at age 17 to 18?

Jonathan Byers: I believe that the courts statutory construction would be that once you turn 18 you are not a minor anymore, so there is no affirmative defense. I believe this would be interpreted by the courts and has been in the hands-on sexual offenses to include age 17.

Ch. Hogue: Thank you. Further testimony in support. Testimony in opposition. Neutral testimony.

Sen. Grabinger: I agree with Sen. C. Nelson. Maybe it should be "to include 17 years of age" to clear it up. It should include up to and through age 18.

Sen. Armstrong: It is really the committee's preference on language, the courts have been arguing by creative defense attorneys who had nothing else to argue and the courts have held that it includes everyone until the age of majority. It might be cleaner for the private citizen saying "15 and older".

Ch. Hogue: We will close the hearing.

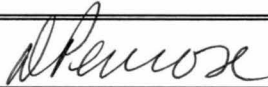
# 2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee  
Fort Lincoln Room, State Capitol

SB 2266  
2/9/2015  
23478

- Subcommittee  
 Conference Committee

Committee Clerk Signature



**Minutes:**

1

Ch. Hogue: We will take a look at SB 2266. This bill altered the affirmative defense and I thought about changing that language but I decided it was okay as is, if the minor was in fact 15 to 17 years of age, they can still assert the good faith defense that they didn't know the person was a minor, if the child is 14, they are out of luck under the assumption that they should have known that the person was under 14.

Sen. C. Nelson: I thought the discussion was that 15-17 years of age made it unclear if it covered through the end of the 17<sup>th</sup> year; that it would be better to define a minor up to the end of being minor, rather than 15 to 17. To me that means up to their 17<sup>th</sup> birthday. Wouldn't they be in limbo between 17 and 18 years of age.

Ch. Hogue: We had an answer to that question, because it appeared somewhere else in code like this, so if a person is 17 years old and 11 months, this affirmative defense would still be available to them as it would if they were 15 years old and 1 day. If they are 14 years old and 11 months and 30 days, it's not available. The other feature of the bill, page 2, lines 12. If there is a minor who happens to be doing a dance and you try to induce that person to further engage in sexual conduct, that turns into a felony.

Sen. Grabinger: This was the amendment that we talked about doing the other day (see attached 1). He explained the amendment. I move the amendment.

Sen. Armstrong: Second the motion.

Ch. Hogue: Voice vote, motion carried. What are the committee's wishes.

Sen. Armstrong: I move a Do Pass as amended.

Sen. Casper: Second the motion.

**6 YES 0 NO 0 ABSENT**

**DO PASS AS AMENDED**

**CARRIER: Sen. Grabinger**

February 9, 2015

TD  
2/9/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2266

Page 3, line 2, remove "to"

Page 3, line 3, remove "seventeen"

Page 3, line 3, after "age" insert "or older"

Renumber accordingly

Date: 2/9/15  
Voice Vote # 1

2015 SENATE STANDING COMMITTEE  
VOICE VOTE  
BILL/RESOLUTION NO. 2266

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 15.8190.01001 02000

- Recommendation:  Adopt Amendment
- Do Pass     Do Not Pass     Without Committee Recommendation
- As Amended     Rerefer to Appropriations
- Place on Consent Calendar

Other Actions:  Reconsider     \_\_\_\_\_

Seconded By

Motion Made By Sen. Grabinger Sen. Armstrong

Senators	Yes	No	Senators	Yes	No
Ch. Hogue			Sen. Grabinger		
Sen. Armstrong			Sen. C. Nelson		
Sen. Casper					
Sen. Luick					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*Motion Carried.*



Date: 2/9/15

Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTE

BILL/RESOLUTION NO. 2266

Senate JUDICIARY Committee

Subcommittee

Amendment LC# or Description: 15. 8190. 01001 02000

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar

Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Sen Armstrong Seconded By Sen Casper

Senators	Yes	No	Senators	Yes	No
Chairman Hogue	✓		Sen. Grabinger	✓	
Sen. Armstrong	✓		Sen. C. Nelson	✓	
Sen. Casper	✓				
Sen. Luick	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Grabinger

**REPORT OF STANDING COMMITTEE**

**SB 2266: Judiciary Committee (Sen. Hogue, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2266 was placed on the Sixth order on the calendar.

Page 3, line 2, remove "to"

Page 3, line 3, remove "seventeen"

Page 3, line 3, after "age" insert "or older"

Renumber accordingly

**2015 HOUSE JUDICIARY**

**SB 2266**

# 2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee  
Prairie Room, State Capitol

SB 2266  
3/18/2015  
Job #25084

- Subcommittee  
 Conference Committee

Committee Clerk Signature *Kenneth M. Tuleh*

## Explanation or reason for introduction of bill/resolution:

Relating to the use of minors in sexual performances; and to provide a penalty.

## Minutes:

Testimony #1, #2.

**Jonathan Byers, Assistant Attorney General:** (See Testimony #1)(1:20-3:07)

**Rep. G. Paur:** Page 2 lines 12 on down; that insertion at the end; does that make sense to you?

**Jonathan Byers:** That is addressing if an adult is luring a minor by computer and they are doing this over the computer and they use their webcam. Or are talking to the minor, and saying that they're under age to try to get the minor to give pictures back and stuff. If the adult is portraying himself to be a minor... There may need to be a few more words. I can see why it was written like it was. It may not be during the performance itself, but as part of that grooming or luring. What the adult sitting there is trying to do is to get the kid on the other end of the conversation to send me stuff so he (adult) portrays himself to be a minor, in part of that conversation, and then is when the performance would happen. The kid would turn on their webcam, and send them images. And so it isn't necessarily during the performance. It's during that where they're intending to persuade, induce or entice them to do it; right prior to the performance.

**Rep. G. Paur:** Why does 15 appear to be a breakpoint so often?

**Jonathan Byers:** It's one of those difficult things where the legislature had to decide back at some time to draw a line so anyone younger than this, we're going to treat it even more seriously. The Legislature drew the line, saying that under 18, you can't consent to sexual contact. And then the Legislature recognized, and I think this may go all the way back to the adoption of the modern criminal code in 1973, the Legislature recognized that for some sexual offenses, like gross sexual imposition, where the minor is under 15, we want that to even have more penalty.

**Rep. G. Paur:** Basically it's tied maybe somewhat to puberty?

**Jonathan Byers:** I think at least now, generally puberty is much quicker than that. You're talking about maybe 11 or 12 years old. Maybe it's just a recognition that 15 year-olds are in high school, and maybe younger than that you might be getting down into junior high, and just have less maturity to be able to be responsible in some way.

**Rep. L. Klemin:** Section 2 subsection 2 that we were just talking about; I don't see anything in there about internet luring of a minor and that sort of thing. It seems to me this whole section applies to use of a minor in a sexual performance. And so, I understood you to say that we're talking about luring a minor by computer over the internet to send some pictures. To me, I don't read that into this at all. It seems to me it's all limited to something that happens related to and in fact, sexual performance.

**Jonathan Byers:** If the two people; the adult and the minor are in a room face-to-face, the minor has the ability to look at the adult and gage how old they think they are. What this is addressing is, in cases where there is a sexual performance sought out, where they might not be in the room together, and the adult can use the anonymity of things such as the Internet to portray themselves as younger than they really are. And so, although it's talking about a sexual performance, that can happen in a lot of different ways, and the Internet is just one of those. The method before the Internet was, the adults used to put advertisements in teen magazines and ask if they could strike up a pen-pal circumstance, portray themselves. I can even think of a circumstance where a lady from Mandan brought a teen magazine to me and said, my kid has been corresponding with this teen-ager out in North Carolina. And it was all in response to this teen magazine. And this person out in North Carolina convinced my son to send pictures of himself, and then the person in North Carolina also sent some back. She showed me the picture and it had a 50-year-old man in it, and a boy that looked like he was 15. I said to the lady, I'm betting you that the person who is corresponding with your son is not the 15-year-old; it's this 50-year-old guy standing next to him, and it turned out that was the circumstance. This isn't just the Internet; it's when minors and adults are not in the same location, so the kid can see who they're talking to.

**Rep. L. Klemin:** It would read better if it said, with the intent to persuade, induce, entice or coerce a minor to engage in a sexual performance, the adult portrays himself as a minor. That would be consistent with the rest of this section. "To engage in a sexual performance."

**Jonathan Byers:** That would work as well.

**Rep. L. Klemin:** Sexual conduct during a performance is what I was focusing on, I guess. However this is revised, it seems to me the intent should be to engage in a sexual performance.

**Jonathan Byers:** Part of what I think hangs people up is the word performance. It's a little different. It has a broader connotation in this bill than you would think of when you're just using it in common conversation.

**Rep. L. Klemin:** I guess I understand that, but the title of the bill and subsection 1 are all talking about conduct and a sexual performance, and not during a performance.

**Jonathan Byers:** I have no objection to that type of amendment as long as we're not talking about the adult portray himself during the performance because that would kind of defeat it.

**Rep. Brabandt:** I think that 15 year old cutoff might have something to do with the fact that females could get married at 16 in ND, at least they could in 1964.

**Rep. P. Anderson:** Is that still the way it is?

**Jonathan Byers:** You may be right. I think it may still require the parents to sign off, but I don't know that for sure.

**Rep. P. Anderson:** When we talk about grading legislative performance by national organizations, do you think the human traffickers look at that and say, this state is where I'm going? What drives them to go where they go?

**Jonathan Byers:** I don't think they probably look at those websites of the national organizations and say North Dakota is a D+, and I think I'll move to North Dakota. But what they do pay attention to is the word on the street, how much are we getting, what is the price for us doing business in ND? If there's not much of a price of doing business, and if they don't get bothered by law enforcement very much, then they will come. If we do things like passing some of these bills to raise the stakes for them doing business here, that word on the street will indicate to them, don't come, or if you've been here, maybe you should find a different place.

**Chairman K. Koppelman:** Are we really that concerned with grading? Does anybody really pay attention, other than other AGs, other legislators, maybe government types.

**Jonathan Byers:** If that is all we are worried about, it is not worth doing, but if we are doing these things that make sense, and at the same time we can make our grade look better, why not do it?

**Rep. L. Klemin:** We've got this other whole issue we are dealing with. We've got over-population of the prison. We got tough on crime in the 80s and 90s, and looked at the consequences of increasing penalties all over the place. And that's exactly what we're doing in this bill. Everything that was a B felony is going to an A felony. If it's an A misdemeanor, it's going to a C felony. We are increasing all of the penalties. That may have some other sentencing consequences.

**Jonathan Byers:** There may be some sentencing consequences. A judge might attach a longer sentence to a bump-up in penalty class. There is only one, really, that is a mandatory minimum, and that's is it's an AA felony gross sexual imposition. Then you've got a 20-year minimum for rape or a 5-year minimum if the victim is under age 15. So there you have some kind of set-in-stone requirements that the judge and the Department of Corrections are going to be stuck with. However, I do want to point out that if it's a question of cost, this is like that old Midas commercial, where the mechanic says, Pay me now or pay me later. For sexual offending, they've done studies that show the cost to society for one sexual offense victim is in the neighborhood of \$180,000-\$200,000. So it's a question

of incarcerating, dealing with the offender now or taking the chance that if they have up to 20 victims like some of the people testified yesterday, you're going to have that \$200,000 multiplied by 20 or more. And so, it's a question of whether the N.D. legislature spends its money now on things that cause some deterrent effect or spend it later on more victims.

**Rep. L. Klemin:** Does it make a difference if we say you are going to prison for 10 years on each count of 10 different violations, or whether you're going to prison for 20 years on each count to serve concurrently. I'm not sure the deterrent effect is really there so much. How does the 85% rule apply to some of this? We're getting this from your office, let's get tougher and increase all these penalties. From the Department of Corrections, they're saying, wait a minute. We don't have room for anyone else, so let's scale back things. In this bill, everything is going up.

**Jonathan Byers:** The 85% rule would apply for the forcible gross sexual imposition only, and so that's again the one with the mandatory minimum, and it's the one that has the 85 percent rule, so that is something that you guys get paid the big bucks to make the tough decisions, I guess. I do know the sex offenses are the ones I primarily deal with, and it just seems to me, from the various N.D. citizens that I come into contact with, this is one of those kind of crimes where they expect there to be a tough sanction, and I don't think that they're at all disappointed with anything that the legislature has done, including what you talked about, with all the legislation that we've looked at in the last 10 or 20 years.

**Rep. Brabandt:** Isn't the penalties similar to a speeding ticket? \$20 speeding tickets don't stop any speeders. \$200 fines do. Misdemeanors probably don't stop human trafficking, but the word felony will, probably. Is it the same scenario?

**Jonathan Byers:** They aren't going to go look at a website, and pay attention to a national organization. What they pay attention to is kind of the things that they can understand, and even North Dakota's most-seasoned criminals understand the difference between Class B felony means and what Class A felony means, and the impact that can have on their future. Felony would be a key word, and even the letter grade means a lot to them.

**Rep. K. Wallman:** I see this as treatment focused. It's not incarceration-focused per se. We've heard testimony that prostitution or human trafficking isn't a victimless crime; it's not like minor possession of marijuana. So I feel like this is in a completely different class. We have studies on dosage incarceration that DOCR has provided. Do you suspect that it is a deterrent, and that we could find data from other states that shows that these, that amping up these penalties is a deterrent for them coming to our state? Or for increasing in our state?

**Jonathan Byers:** I'm not sure there would be statistics readily available because this whole idea of human trafficking and legislation going around all the states is new enough to where we might not have gotten good data on all that yet. But I'm betting that down the road we're going to see that. And one good deterrent for sure is that the human trafficker is sitting in a prison cell, he's not going to be doing another one while he is there.

**Chairman K. Koppelman:** The definition in the bill of performance says, any play, motion picture, photograph, dance or other visual representation, or any part of a performance..

So when we are talking about people being enticed into this, what are we talking about? Is it videos, pornography? What are we dealing with here?

**Jonathan Byers:** Technology has driven what is available to people interested in child pornography, which is what this whole chapter deals with, this child pornography. And you used to see black-and-white Polaroid photographs where the person intentionally doesn't have their own head in the picture. Then when 35-millimeter cameras became more available, and they could find a way to get the film developed, you used to see more commonly color photographs and so forth. Now, for people that have the internet, you're more and more seeing that they want videos. And so the typical videos that people will be exchanging on the peer-to-peer networks are graphic videos with even the adults faces and features available in it. And a lot more than the still photographs that were available years ago.

**Chairman K. Koppelman:** We are dealing with media here or live performance as well?

**Jonathan Byers:** You could probably have live performances as well. I think that law enforcement would find it very rare that they could get themselves into such a situation as to interrupt that. And so most commonly what criminal justice system sees is those cases where adults have recorded that kind of a performance.

**Chairman K. Koppelman:** I did see the prime sponsor in the room for a brief time, but I believe that Sen. Armstrong has her testimony.

**Senator Kelly Armstrong:** (See Testimony #2 given out for Sen. Unruh)

**Christina Sambor, Coordinator, FUSE:** We are in support of this to the extent that it overlaps, there are some definitions in here, particularly line 17-20 on page 2. If you read that, it would likely also cross over with a human trafficking-type offense. The other thing I wanted to address briefly on the question on the grades from the national organizations. The one thing that is really important to is that there is significant Federal funding available for a lot of this work. And it's stuff that we're looking at and going after. And they do put stock in grades that an organization like Polaris would assign, because they're really looking comprehensively at how the state is doing and collaborating at addressing these issues. I think it's going to be a great thing for North Dakota to go from red to green. We'll just sail right into the leadership in this if we pass a lot of this stuff. It would be great for us from a funding perspective. I would say that's the one major benefit to those national rankings and grades.

**Chairman K. Koppelman:** How does this activity fit into the human trafficking puzzle? We talked about forced labor. We talked about forced prostitution. Maybe these circumstances involve a bit of both, or maybe there's not prostitution. Maybe it's just filming videos or something, but it's certainly forced labor; there's certainly a sexual connotation. Are you aware of how this works? Is it progressive?

**Christina Sambor:** There are certainly a lot of advocates that advocate against the consumption of pornography in general because of its connection to human trafficking. The fact that a lot of people that are in pornographic videos are often, that's one of the things



they're being forced to do as part of the trafficking is produce pornography. Certainly with child pornography, you can see where that would be a huge additional problem. The other thing that's really important to consider with the recording and the distribution, is that It is hard to remove pictures from the internet once it is put on there. So, really taking a look at this and increasing these types of laws where we can, because it's just that perpetual re-victimization; you hear victims talking about that, about being haunted by the idea that some of the stuff we heard yesterday not only happened to them, but is being viewed by other people for, which is essentially their misguided pleasure. And It's just terrible. I did look it up, and you can get married at 16 with your parents' consent.

Support:

**Christopher Dodson, N.D. Catholic Conference:** We generally support all of these. The only reason I'm jumping up is because, in response to your last question, and I recall Patrick Atkinson from the God's Child Project mentioning to me that I think he said the FBI estimates about 80 percent of the persons that appear on online pornography, they believe are victims of trafficking. So there is that connection. How they know that, I don't know. But I remember him giving me that information, and if you really wanted, we can track Patrick down. I believe he is back in the state.

Opposition: None

Neutral: None

Closed

# 2015 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

SB 2266  
3/24/2015  
25421

- Subcommittee  
 Conference Committee

Committee Clerk Signature



**Minutes:**

**Chairman K. Koppelman:** Reopened the meeting on SB 2266.

**Rep. D. Larson:** Page 2 line13 take conduct during a out and add a in front of sexual performance.

**Moved the amendment by Rep. D. Larson: Seconded by Rep. K. Wallman:**

**Voice vote carried.**

**Do Pass As Amended by Rep. Lois Delmore: Seconded by Rep. Mary Johnson:**

**Roll Call Vote: 12 Yes 0 No 1 Absent Carrier: Rep. Mary Johnson:**

March 24, 2015

3/24/15

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2266

Page 2, line 13, after the "in" insert "a"

Page 2, line 13, remove "conduct during a"

Page 2, line 13, after "performance" insert an underscored comma

Page 2, line 14, replace "himself or herself as" with "the adult to be"

Renumber accordingly

Date: 3-24-15  
 Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. SB2211**

House JUDICIARY Committee

Subcommittee  Conference Committee

Amendment LC# or Description: 15.8190.02001

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Rep Larson Seconded By Rep. Wallman

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman			Rep. Pamela Anderson		
Vice Chairman Karls			Rep. Delmore		
Rep. Brabandt			Rep. K. Wallman		
Rep. Hawken					
Rep. Mary Johnson					
Rep. Klemin					
Rep. Kretschmar					
Rep. D. Larson					
Rep. Maragos					
Rep. Paur					

*Voice  
 Voted  
 Carried*

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Date: 3-24-15  
 Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES S.B.  
 BILL/RESOLUTION NO. 2266

House JUDICIARY Committee

Subcommittee  Conference Committee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Rep. Delmore Seconded By Rep. Johnson

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman	✓		Rep. Pamela Anderson	✓	
Vice Chairman Karls	✓		Rep. Delmore	✓	
Rep. Brabandt	✓		Rep. K. Wallman	✓	
Rep. Hawken	✓				
Rep. Mary Johnson	✓				
Rep. Klemin	✓				
Rep. Kretschmar	✓				
Rep. D. Larson	✓				
Rep. Maragos	✓				
Rep. Paur	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep. Johnson

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

**REPORT OF STANDING COMMITTEE**

**SB 2266, as engrossed: Judiciary Committee (Rep. K. Koppelman, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2266 was placed on the Sixth order on the calendar.

Page 2, line 13, after the "in" insert "a"

Page 2, line 13, remove "conduct during a"

Page 2, line 13, after "performance" insert an underscored comma

Page 2, line 14, replace "himself or herself as" with "the adult to be"

Renumber accordingly

**2015 TESTIMONY**

**SB 2266**

#1-1  
2-3-15

**SB 2266 - USE OF MINORS IN SEXUAL PERFORMANCES**  
**Testimony of Sen. Jessica Unruh**

SB 2266 comes to you as a product of recommendations by cybercrime agents at the Attorney General's Bureau of Criminal Investigation.

The bill will increase the penalty class for those who employ, authorize, or induce minors to engage in sexual conduct during a performance. There is also a corresponding increase for promoting (manufacturing) an obscene sexual performance or a sexual performance.

Although suggested by the BCI cybercrime agents, the increase in these penalties also conforms to recommendations made by one of the national organizations that "grades" our legislative performance in the human trafficking arena.

Lastly, the bill limits the affirmative defense available if the defendant in good faith reasonably believed the person appearing in the performance was eighteen years old or older. Under current law that affirmative defense applied to any minor; under this bill draft it is limited to minors age 15-17, just like North Dakota's treatment of hands-on sexual offenses.



2/9/15

PROPOSED SB 2266

Sen. Grabiner  
#1

1 A BILL for an Act to amend and reenact sections 12.1-27.2-01, 12.1-27.2-02, 12.1-  
2 27.2-03, 12.1-27.2-04, and 12.1-27.2-05 of the North Dakota Century Code, relating  
3 to the use of minors in sexual performances; and to provide a penalty.

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

5 . **SECTION 1. AMENDMENT.** Section 12.1-27.2-01 of the North Dakota Century  
6 Code is amended and reenacted as follows:

7 . **12.1-27.2-01. Definitions.**

8 . As used in this chapter:

- 9 . 1. "Obscene sexual performance" means any performance which includes  
10 . sexual conduct by a minor in any obscene material or obscene  
11 . performance, as defined in section 12.1-27.1-01.  
12 . 2. "Performance" means any play, motion picture, photograph, dance, or  
13 . other visual representation, or any part of a performance.  
14 . 3. "Promote" means to procure, manufacture, issue, sell, give, provide, lend,  
15 . mail, deliver, transfer, transmit, ship, transport, publish, distribute,  
16 . circulate, disseminate, present, exhibit, or advertise  
17 . 4. "Sexual conduct" means actual or simulated sexual intercourse,  
18 . sodomy, sexual bestiality, masturbation, sadomasochistic abuse, or lewd  
19 . exhibition of the buttocks, breasts, or genitals, including the further  
20 . definitions of sodomy and sadomasochistic abuse under section 12.1-  
21 . 27.1-01.  
22 . 5. "Sexual performance" means any performance which includes sexual  
23 . conduct by a minor.  
24 . 6. "Simulated" means the explicit depiction of any of the conduct set forth in  
25 . subsection 4 which creates the appearance of actual sexual conduct and  
26 . which exhibits any nude or partially denuded human figure, as defined in  
27 . section 12.1-27.1-03.1.

28 . **SECTION 2. AMENDMENT.** Section 12.1-27.2-02 of the North Dakota Century  
29 Code is amended and reenacted as follows:

30 . **12.1-27.2-02. Use of a minor in a sexual performance.**

- 31 . 1. A person is guilty of a class BA felony if, knowing the character and  
32 . content of a performance, that person employs, authorizes, or induces a  
33 . minor to engage in sexual conduct during a performance or, if being a  
34 . parent, legal guardian, or custodian of a minor, that person consents to

#1-2

1 . the participation by the minor in sexual conduct during a performance.  
2 . 2. An adult is guilty of a class A felony if, with the intent to persuade,  
3 . induce, entice, or coerce a minor to engage in sexual conduct during a  
4 . performance the adult portrays himself or herself as a minor.

5 . **SECTION 3. AMENDMENT.** Section 12.1-27.2-03 of the North Dakota Century  
6 Code is amended and reenacted as follows:

7 . **12.1-27.2-03. Promoting or directing an obscene sexual performance by a**  
8 . **minor.**

9 . A person is guilty of a class BA felony if, knowing the character and content of a  
10 performance, that person produces, directs, or promotes any obscene  
11 performance which includes sexual conduct by a person who was a minor at the  
12 time of the performance.

13 . **SECTION 4. AMENDMENT.** Section 12.1-27.2-04 of the North Dakota Century  
14 Code is amended and reenacted as follows:

15 . **12.1-27.2-04. Promoting a sexual performance by a minor.**

16 . A person is guilty of a class CB felony if, knowing the character and content of a  
17 performance, that person produces, directs, or promotes any performance which  
18 includes sexual conduct by a person who was a minor at the time of the  
19 performance.

20 . **SECTION 5. AMENDMENT.** Section 12.1-27.2-05 of the North Dakota Century Code  
21 is amended and reenacted as follows:

22 . **12.1-27.2-05. Sexual performance by a minor - Affirmative defenses.**

23 . It is an affirmative defense to a prosecution under this chapter that:

- 24 . 1. The defendant in good faith reasonably believed the person appearing in the  
25 . performance was eighteen years of age or older, if the minor was in fact fifteen to  
26 . seventeen years of age; years or older.
- 27 . 2. The material or performance involved was disseminated or presented for a bona  
28 . fide medical, scientific, educational, religious, governmental, judicial, or other  
29 . appropriate purpose by or to a physician, psychologist, sociologist, scientist, teacher,  
30 . person pursuing bona fide studies or research, librarian, member of the clergy,  
31 . prosecutor, judge, or other person having a similar interest in the material or  
32 . performance.

SB 2266  
2/9/15

#1  
SB2266  
3-18-15

ENGROSSED SENATE BILL 2266 TESTIMONY  
HOUSE JUDICIARY COMMITTEE  
MARCH 18<sup>TH</sup>, 2015  
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 Engrossed Senate Bill 2266.

This bill is a product of recommendations by our cybercrime agents at the Bureau of Criminal Investigation. The inclusion of the words "ship" and "transport" on page one of the bill are intended to make state law consistent with similar federal provisions.

Section 2 of the bill increases the penalty class for those who employ, authorize, or induce minors to engage in sexual conduct during a performance. There is also a corresponding increase for promoting (manufacturing) an obscene sexual performance or a sexual performance. (Sections 3 and 4) Although suggested by our cybercrime agents, the increase in these penalties also conforms to recommendations made by one of the national organizations that "grades" our legislative performance in the human trafficking arena.

Section 5 of the bill limits the affirmative defense available if the defendant in good faith reasonably believed the person appearing in the performance was eighteen years old or older. Under current law that affirmative defense applies to any minor;

①

under this bill it is limited to minors age 15-17, just like North Dakota's treatment of hands-on sexual offenses.

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

#2  
SB2266  
3-18-15

**SB 2266 - USE OF MINORS IN SEXUAL PERFORMANCES**  
**Testimony of Sen. Jessica Unruh**

SB 2266 comes to you as a product of recommendations by cybercrime agents at the Attorney General's Bureau of Criminal Investigation.

The bill will increase the penalty class for those who employ, authorize, or induce minors to engage in sexual conduct during a performance. There is also a corresponding increase for promoting (manufacturing) an obscene sexual performance or a sexual performance.

Although suggested by the BCI cybercrime agents, the increase in these penalties also conforms to recommendations made by one of the national organizations that "grades" our legislative performance in the human trafficking arena.

Lastly, the bill limits the affirmative defense available if the defendant in good faith reasonably believed the person appearing in the performance was eighteen years old or older. Under current law that affirmative defense applied to any minor; under this bill draft it is limited to minors age 15-17, just like North Dakota's treatment of hands-on sexual offenses.