

2011 HOUSE JUDICIARY

HB 1371

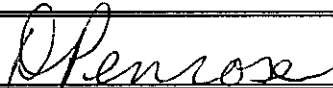
2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1371
January 26, 2011
13427

☐ Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1371.

Rep. Lois Delmore: Sponsor, support. This bill may look familiar. The sexting bill from last session. Even though the bill passed both Houses and was signed into law, there were some challenges when it went to court. HB 1371 provides a remedy to the problem. The bill provides a simple amendment to NDCC 12.1-27.1-03.3 relating to the creation, possession or dissemination of sexually expressive images (see attached 1). We're just cleaning up language to make it clear.

Chairman DeKrey: Thank you. Further testimony in support.

Tom Trenbeath, Chief Deputy AG: Frankly, I don't have a lot to add to Rep. Delmore's presentation. She is correct in saying that the AG's office is behind this.

Chairman DeKrey: Thank you. Further testimony in support of HB 1371.

Tim Hathaway, Executive Director, Prevent Child Abuse North Dakota: Support (see attached 2).

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing. What are the committee's wishes in regard to HB 1371.

Rep. Maragos: I would move a Do Pass.

Rep. Koppelman: Second.

12 YES 0 NO 2 ABSENT

DO PASS

CARRIER: Rep. Kingsbury

Date: 1/26/11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1371

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Maragos Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Guggisberg		
Rep. Beadle	✓		Rep. Hogan		
Rep. Boehning	✓		Rep. Onstad	✓	
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Steiner	✓				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Kingsbury

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

REPORT OF STANDING COMMITTEE

HB 1371: Judiciary Committee (Rep. DeKrey, Chairman) recommends **DO PASS**
(12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1371 was placed on the
Eleventh order on the calendar.

2011 SENATE JUDICIARY

HB 1371

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1371
3/14/11
Job #15366

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the creation, possession, or dissemination of sexually expressive images.

Minutes:

There is attached testimony

Senator Nething – Chairman

Representative L. Delmore – Introduces the bill – Explains the changes. Provides an attachment. She also hands in testimony for Aaron Birst, ND Association of Counties.

Jonathan Byers – Mentions that the penalty is appropriate for the offense in this case. In favor of.

Opposition

Sophia Preszler- States she is opposed.

Closed the hearing on 1371

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1371
3/22/11
Job #15841

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to the creation, possession, or dissemination of sexually expressive images.

Minutes:

Senator Nething – Chairman

Committee work

Senator Olafson said last session we had the bill correct but in conference committee the House argued to put language back that we had struck out. That turned out to be the problem area and the judge threw it out.

Senator Olafson moves a do pass
Senator Sitte seconds

Roll call vote
6 yes, 0 no

Senator Olafson

Date: 3/22/11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1321

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Olafson Seconded By Senator Sitte

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	X		Carolyn Nelson	X	
Curtis Olafson - V. Chairman	X				
Stanley Lyson	X				
Margaret Sitte	X				
Ronald Sorvaag	X				

Total (Yes) 6 No 6

Absent _____

Floor Assignment Senator Olafson

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

REPORT OF STANDING COMMITTEE

HB 1371: Judiciary Committee (Sen. Nething, Chairman) recommends **DO PASS**
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1371 was placed on the
Fourteenth order on the calendar.

2011 TESTIMONY

HB 1371

Sponsor bullet points for HB 1371 (Sexting)

- HB 1371 is a simple amendment to N.D.C.C. § 12.1-27.1-03.3, relating to the creation, possession or dissemination of sexually expressive images.
- In October 2010, a North Dakota District Court ruled the statute as written to be unconstitutional because it does not require a “reasonable expectation of privacy” of the person whose photo was taken.
- Without a “reasonable expectation of privacy,” the court felt the statute prohibits protected conduct, such as taking a picture of a streaker running down a public street. The streaker has no expectation of privacy, but the person taking the photo could have been charged with an offense.
- The bill adds a “reasonable expectation of privacy” to the current statute. Several other states with laws containing similar language have withstood court challenges. The Attorney General feels this simple change will allow our statute to pass constitutional challenges.

Testimony on HB 1371

Presented by Tim Hathaway

Executive Director, Prevent Child Abuse North Dakota

Representative DeKrey and Members of the House Judiciary Committee,

I am Tim Hathaway, Executive Director of the Prevent Child Abuse North Dakota. Our organization is engaged in the effort to eliminate all forms of child maltreatment.

I stand in support of HB 1371. This bill will build protection around the children of North Dakota by insuring penalties for individual who seek to exploit their lack of experience and understanding. Laws that limit the spread of explicit materials make it more difficult for adults to prey on our children.

Thank you for your support of this bill.

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Testimony to the
SENATE JUDICIARY

Prepared March 13th, 2011 by the North Dakota Association of Counties
Aaron Birst, Legal Counsel

CONCERNING HOUSE BILL 1371

Chairman Nething and members of the committee, the North Dakota Association of Counties is here today to support HB 1371 which was brought to our attention as a result of a criminal case out of Cass County this past summer.

The facts of that case involved one NDSU student capturing his female roommate taking a shower with his cell phone camera. This video was taken unbeknownst and without the approval of the female roommate. Eventually law enforcement became aware of the issue and conducted an investigation and sent it to the Cass County State's Attorneys office for charges.

The prosecutor initially charged a violation of NDCC 12.1-20-12.2 Surreptitious intrusion. However, upon further review of that statute it appeared the simple words "through the window or any other aperture of" would create an additional element the prosecutor could not prove since the video was not taken through any windows. (this statute is being addressed in HB 1249 which will also be heard in the Senate Judiciary Committee shortly)

The prosecutor then had to amend the charge to be a violation of 12.1-27.1-03.3 which is the statute this bill attempts to clarify. As you might remember from last session, 12.1-27.1-03.3 was created to address situations where one creates or distributes sexual images of another without their consent. The Cass County prosecutor then charged the defendant with this statute but a district court judge found the statute unconstitutional because it was overly broad. What this bill does is attempt to address some of that judge's concerns by inserting a "reasonable expectation of privacy" into the statute. It is our intent that this additional element will address some of the unconstitutionally aspects as outlined in the district court's opinion.

By adding the following language the legislature would allow this statute to be more effective against clearly unacceptable conduct.

For the following reasons I ask that you support House Bill 1371.

Thank you.