

Sixty-ninth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1351

Introduced by

Representatives Satrom, Christy, Ostlie, Schneider

Senators Clemens, Conley

1 A BILL for an Act to create and enact a new section to chapter 12.1-27.1 of the North Dakota
2 Century Code, relating to prohibiting sexually explicit deep fake videos and images; to amend
3 and reenact section 12.1-32-15 of the North Dakota Century Code, relating to sexual offenders
4 and registration requirements; and to provide a penalty.

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

6 **SECTION 1.** A new section to chapter 12.1-27.1 of the North Dakota Century Code is
7 created and enacted as follows:

8 **Sexually explicit deep fake videos or images prohibited - Penalty - Affirmative**
9 **defense - Civil action.**

10 1. As used in this section:

11 a. "Sexual performance" means any performance that includes sexual conduct.

12 b. "Sexually explicit deep fake video or image" means any video recording, motion-
13 picture film, electronic image, or photograph created with the intent to deceive,
14 which appears to depict a minor engaging in sexual conduct or a sexual
15 performance that did not occur in reality or that the minor did not actually
16 perform, and whose appearance in the video recording, motion-picture film,
17 electronic image, or photograph is a result of digitization.

18 2. It is a class A misdemeanor for a person to knowingly produce, possess, distribute,
19 promote, advertise, sell, exhibit, broadcast, or transmit a sexually explicit deep fake
20 video or image.

21 3. It is an affirmative defense to a prosecution under this section that:

22 a. The sexually explicit deep fake video or image has serious literary, artistic,
23 political, or scientific value; or

- 1 **b.** The sexually explicit deep fake video or image was presented for bona fide
2 medical, scientific, educational, religious, governmental, judicial, or other
3 appropriate purpose by or to a physician, psychologist, sociologist, scientist,
4 teacher, person pursuing bona fide studies or research, librarian, member of the
5 clergy, attorney, law enforcement officer, or a judge.
- 6 **4.** A depicted minor who is identifiable and who suffers harm from a person's violation of
7 this section has a cause of action against the person if the person produced,
8 possessed, distributed, promoted, advertised, sold, exhibited, broadcasted, or
9 transmitted the sexually explicit deep fake video or image for the purpose of sexual
10 arousal, sexual gratification, humiliation, degradation, or monetary or commercial gain.
- 11 **a.** The court may exclude or redact from all pleadings and documents filed in the
12 action other identifying characteristics of the plaintiff under rule 3.4 of the North
13 Dakota Rules of Court.
- 14 **b.** A plaintiff to whom subdivision a applies shall file with the court and serve on the
15 defendant a confidential information form that includes the excluded or redacted
16 plaintiff's name and other identifying characteristics.
- 17 **c.** The court may make further orders as necessary to protect the identity and
18 privacy of a plaintiff.
- 19 **5.** In an action under subsection 4, a prevailing plaintiff may recover:
- 20 **a.** The greater of:
- 21 (1) Economic and noneconomic damages proximately caused by the
22 defendant's violation of this section, including damages for emotional
23 distress whether or not accompanied by other damages; or
- 24 (2) Statutory damages not to exceed ten thousand dollars against each
25 defendant found liable under this section;
- 26 **b.** An amount equal to any monetary gain made by the defendant from the
27 distribution, promotion, advertising, sale, exhibition, broadcasting, or transmission
28 of the sexually explicit deep fake video or image; and
- 29 **c.** Exemplary damages.
- 30 **6.** In an action under subsection 4, the court may award a prevailing plaintiff:
- 31 **a.** Reasonable attorney's fees and costs; and

b. Other remedies available by law, including injunctive relief.

7. This chapter does not affect or preclude any other right or remedy available under federal law or a law of this state other than this section.

SECTION 2. AMENDMENT. Section 12.1-32-15 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-15. Offenders against children and sexual offenders - Sexually violent predators - Registration requirement - Penalty.

1. As used in this section:

- a. "A crime against a child" means a violation of chapter 12.1-16, section 12.1-17-01.1 if the victim is under the age of twelve, 12.1-17-02, 12.1-17-04, subdivision a of subsection 6 of section 12.1-17-07.1, section 12.1-18-01, 12.1-18-02, 12.1-18-05, chapter 12.1-29, or section 14-09-22, subsection 3 of section 12.1-41-02, subsection 3 of section 12.1-41-03, or an equivalent offense from another court in the United States, a tribal court, or court of another country, in which the victim is a minor or is otherwise of the age required for the act to be a crime or an attempt or conspiracy to commit these offenses.
- b. "Department" means the department of corrections and rehabilitation.
- c. "Homeless" means an individual who is physically present in this state, but is living in a park, under a bridge, on the streets, in a vehicle or camper, or is otherwise without a traditional dwelling, and also one who resides in this state but does not maintain a permanent address. The term does not include individuals who are temporarily domiciled or individuals residing in public or private shelters that provide temporary living accommodations.
- d. "Mental abnormality" means a congenital or acquired condition of an individual that affects the emotional or volitional capacity of the individual in a manner that predisposes that individual to the commission of criminal sexual acts to a degree that makes the individual a menace to the health and safety of other individuals.
- e. "Predatory" means an act directed at a stranger or at an individual with whom a relationship has been established or promoted for the primary purpose of victimization.

- 1 f. "Reside" means to live permanently or be situated for a considerable time in a
2 home or a particular place.
- 3 g. "Sexual offender" means a person who has pled guilty to or been found guilty,
4 including juvenile delinquent adjudications, of a violation of section 12.1-20-03,
5 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-05.1, 12.1-20-06, 12.1-20-06.1,
6 12.1-20-07 except for subdivision a of subsection 1, 12.1-20-11, 12.1-20-12.1,
7 12.1-20-12.2, 12.1-20-12.3 except for subdivision a of subsection 1 and
8 subdivision b of subsection 1 if the offense involves only a demand for money,
9 section 1 of this Act, chapter 12.1-27.2, subsection 2 of section 12.1-22-03.1,
10 subdivision b of subsection 1 of section 12.1-41-02, section 12.1-41-04,
11 12.1-41-05, or 12.1-41-06, or an equivalent offense from another court in the
12 United States, a tribal court, or court of another country, or an attempt or
13 conspiracy to commit these offenses.
- 14 h. "Sexually dangerous individual" means an individual who meets the definition
15 specified in section 25-03.3-01.
- 16 i. "Temporarily domiciled" means staying or being physically present in this state for
17 more than thirty days in a calendar year or at a location for longer than ten
18 consecutive days, attending school for longer than ten days, or maintaining
19 employment in the jurisdiction for longer than ten days, regardless of the state of
20 the residence.
- 21 2. The court shall impose, in addition to any penalty provided by law, a requirement that
22 the individual register, within three days of coming into a county in which the individual
23 resides, is homeless, or within the period identified in this section that the individual
24 becomes temporarily domiciled. The individual must register with the chief of police of
25 the city of the individual's place of residence, or the sheriff of the county if the
26 individual resides in an area other than a city. A homeless individual shall register
27 every three days with the sheriff or chief of police of the jurisdiction in which the
28 individual is physically present. The court shall require an individual to register by
29 stating this requirement on the court records, if that individual:

- 1 a. Has pled guilty or nolo contendere to, or been found guilty as a felonious sexual
2 offender or an attempted felonious sexual offender, including juvenile delinquent
3 adjudications of equivalent offenses unless the offense is listed in subdivision c.
- 4 b. Has pled guilty or nolo contendere to, or been found guilty as a sexual offender
5 for, a misdemeanor or attempted misdemeanor. The court may deviate from
6 requiring an individual to register if the court first finds the individual is no more
7 than three years older than the victim if the victim is a minor, the individual has
8 not previously been convicted as a sexual offender or of a crime against a child,
9 and the individual did not exhibit mental abnormality or predatory conduct in the
10 commission of the offense.
- 11 c. Is a juvenile found delinquent under subdivision d of subsection 1 of section
12 12.1-20-03, subdivision a of subsection 2 of section 12.1-20-03, or as a sexual
13 offender for a misdemeanor. The court may deviate from requiring the juvenile to
14 register if the court first finds the juvenile has not previously been convicted as a
15 sexual offender or for a crime against a child, and the juvenile did not exhibit
16 mental abnormality or predatory conduct in the commission of the offense.
- 17 d. Has pled guilty or nolo contendere to, or been found guilty of, a crime against a
18 child or an attempted crime against a child, including juvenile delinquent
19 adjudications of equivalent offenses. Except if the offense is described in section
20 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 and the person is not the parent
21 of the victim, the court may deviate from requiring an individual to register if the
22 court first finds the individual has not previously been convicted as a sexual
23 offender or for a crime against a child, and the individual did not exhibit mental
24 abnormality or predatory conduct in the commission of the offense.
- 25 e. Has pled guilty or nolo contendere, been found guilty, or been adjudicated
26 delinquent of any crime against another individual which is not otherwise
27 specified in this section if the court determines that registration is warranted by
28 the nature of the crime and therefore orders registration for the individual. If the
29 court orders an individual to register as an offender under this section, the
30 individual shall comply with all of the registration requirements in this chapter.

- 1 3. If a court has not ordered an individual to register in this state, an individual who
2 resides, is homeless, or is temporarily domiciled in this state shall register if the
3 individual:
 - 4 a. Is incarcerated or is on probation or parole after July 31, 1995, for a crime
5 against a child described in section 12.1-29-02, or section 12.1-18-01 or
6 12.1-18-02 if the individual was not the parent of the victim, or as a sexual
7 offender;
 - 8 b. Has pled guilty or nolo contendere to, or been adjudicated for or found guilty of,
9 an offense in a court of this state for which registration is mandatory under this
10 section or an offense from another court in the United States, a tribal court, or
11 court of another country equivalent to those offenses set forth in this section; or
 - 12 c. Has pled guilty or nolo contendere to, or has been found guilty of, a crime against
13 a child or as a sexual offender for which registration is mandatory under this
14 section if the conviction occurred after July 31, 1985.
- 15 4. In its consideration of mental abnormality or predatory conduct, the court shall
16 consider the age of the offender, the age of the victim, the difference in ages of the
17 victim and offender, the circumstances and motive of the crime, the relationship of the
18 victim and offender, and the mental state of the offender. The court may order an
19 offender to be evaluated by a qualified counselor, psychologist, or physician before
20 sentencing. Except as provided under subdivision e of subsection 2, the court shall
21 state on the record in open court its affirmative finding for not requiring an offender to
22 register.
- 23 5. When an individual is required to register under this section, the official in charge of a
24 facility or institution where the individual required to register is confined, or the
25 department, shall, before the discharge, parole, or release of that individual, inform the
26 individual of the duty to register pursuant to this section. The official or the department
27 shall require the individual to read and sign a form as required by the attorney general,
28 stating that the duty of the individual to register has been explained to that individual.
29 The official in charge of the place of confinement, or the department, shall obtain the
30 address where the individual expects to reside, attend school, or work upon discharge,
31 parole, or release and shall report the address to the attorney general. The official in

1 charge of the place of confinement, or the department, shall give three copies of the
2 form to the individual and shall send three copies to the attorney general no later than
3 forty-five days before the scheduled release of that individual. The attorney general
4 shall forward one copy to the law enforcement agency having jurisdiction where the
5 individual expects to reside, attend school, or work upon discharge, parole, or release,
6 one copy to the prosecutor who prosecuted the individual, and one copy to the court in
7 which the individual was prosecuted. All forms must be transmitted and received by
8 the law enforcement agency, prosecutor, and court thirty days before the discharge,
9 parole, or release of the individual.

10 6. An individual who is required to register pursuant to this section who is released on
11 probation or discharged upon payment of a fine must, before the release or discharge,
12 be informed of the duty to register under this section by the court in which that
13 individual is convicted. The court shall require the individual to read and sign a form as
14 required by the attorney general, stating that the duty of the individual to register under
15 this section has been explained to that individual. The court shall obtain the address
16 where the individual expects to reside, attend school, or work upon release or
17 discharge and shall report the address to the attorney general within three days. The
18 court shall give one copy of the form to the individual and shall send two copies to the
19 attorney general. The attorney general shall forward one copy to the appropriate law
20 enforcement agency having jurisdiction where the individual expects to reside, attend
21 school, or work upon discharge, parole, or release.

22 7. Registration consists of a written or electronic statement signed by the individual,
23 giving the information required by the attorney general, and the biometric data and
24 photograph of the individual. An individual who is not required to provide a sample of
25 blood and other body fluids under section 31-13-03 or by the individual's state or court
26 of conviction or adjudication shall submit a sample of blood and other body fluids for
27 inclusion in a centralized database of DNA identification records under section
28 31-13-05. The collection, submission, testing and analysis of, and records produced
29 from, samples of blood and other body fluids, are subject to chapter 31-13. Evidence
30 of the DNA profile comparison is admissible in accordance with section 31-13-02. A
31 report of the DNA analysis certified by the state crime laboratory is admissible in

1 accordance with section 31-13-05. A district court shall order an individual who refuses
2 to submit a sample of blood or other body fluids for registration purposes to show
3 cause at a specified time and place why the individual should not be required to
4 submit the sample required under this subsection. Within three days after registration,
5 the registering law enforcement agency shall forward the statement, biometric data,
6 and photograph to the attorney general and shall submit the sample of the individual's
7 blood and body fluids to the state crime laboratory. If an individual required to register
8 under this section has a change in vehicle or computer online identity, the individual
9 shall register, within three days after the change, with the law enforcement agency
10 having local jurisdiction of the individual's place of residence of the individual's new
11 vehicle or computer online identity. If an individual required to register pursuant to this
12 section has a change in name, school, or residence or employment address, that
13 individual shall register, at least ten days before the change, with the law enforcement
14 agency having local jurisdiction of the individual's place of residence of the individual's
15 new name, school, residence address, or employment address. A change in school or
16 employment address includes the termination of school or employment for which an
17 individual required to register under this section, the individual shall register within
18 three days of the termination with the law enforcement agency having local jurisdiction
19 of the individual's place of residence. The law enforcement agency, within three days
20 after receipt of the information, shall forward it to the attorney general. The attorney
21 general shall forward the appropriate registration data to the law enforcement agency
22 having local jurisdiction of the new place of residence, school, or employment. Upon a
23 change of address, the individual required to register also shall register within three
24 days at the law enforcement agency having local jurisdiction of the new place of
25 residence. If an individual required to register in North Dakota, including in a tribal
26 registry, resides in another state or on tribal lands, that individual shall register
27 employment and school addresses and any changes in required registration
28 information with the law enforcement agency having local jurisdiction over the school
29 or employment address. The individual registering under this section shall periodically
30 confirm the information required under this subsection in a manner and at an interval
31 determined by the attorney general. A law enforcement agency that has previously

1 registered an offender may omit the biometric data portion of the registration if that
2 agency has a set of biometric data on file for that individual and is personally familiar
3 with and can visually identify the offender. These provisions also apply in any other
4 state that requires registration.

5 8. An individual required to register under this section shall comply with the registration
6 requirement for the longer of the following periods:

- 7 a. A period of fifteen years after the date of sentence or order deferring or
8 suspending sentence upon a plea or finding of guilt or after release from
9 incarceration, whichever is later;
- 10 b. A period of twenty-five years after the date of sentence or order deferring or
11 suspending sentence upon a plea or finding of guilt or after release from
12 incarceration, whichever is later, if the offender is assigned a moderate risk by the
13 attorney general as provided in subsection 12; or
- 14 c. For the life of the individual, if that individual:
- 15 (1) On two or more occasions has pled guilty or nolo contendere to, or been
16 found guilty of a crime against a child or as a sexual offender. If all qualifying
17 offenses are misdemeanors, this lifetime provision does not apply unless a
18 qualifying offense was committed after August 1, 1999;
- 19 (2) Pleads guilty or nolo contendere to, or is found guilty of, an offense
20 committed after August 1, 1999, which is described in subdivision a of
21 subsection 1 of section 12.1-20-03, section 12.1-20-03.1, or subdivision d of
22 subsection 1 of section 12.1-20-03 if the person is an adult and the victim is
23 under age twelve, or section 12.1-18-01 if that individual is an adult other
24 than a parent of the victim, or an equivalent offense from another court in
25 the United States, a tribal court, or court of another country; or
- 26 (3) Is assigned a high risk by the attorney general as provided in subsection 12.

27 9. An individual required to register under this section who violates this section is guilty of
28 a class C felony. The failure of a homeless individual to register as required in
29 subsections 2 and 3 is prima facie evidence of a violation of this section. The clerk of
30 court shall forward all warrants issued for a violation of this section to the county
31 sheriff, who shall enter all such warrants into the national crime information center

1 wanted person file. A court may not relieve an individual, other than a juvenile, who
2 violates this section from serving a term of at least ninety days in jail and completing
3 probation of one year.

4 10. When an individual is released on parole or probation and is required to register
5 pursuant to this section, but fails to do so within the time prescribed, the court shall
6 order the probation, or the parole board shall order the parole, of the individual
7 revoked.

8 11. If an individual required to register pursuant to this section is temporarily sent outside
9 the facility or institution where that individual is confined under conviction or sentence,
10 the local law enforcement agency having jurisdiction over the place where that
11 individual is being sent must be notified within a reasonable time period before that
12 individual is released from the facility or institution. This subsection does not apply to
13 any individual temporarily released under guard from the facility or institution in which
14 that individual is confined.

15 12. The attorney general, with the assistance of the department and the juvenile courts,
16 shall develop guidelines for the risk assessment of sexual offenders who are required
17 to register, with a low-risk, moderate-risk, or high-risk level being assigned to each
18 offender as follows:

19 a. The department shall conduct a risk assessment of sexual offenders who are
20 incarcerated in institutions under the control of the department and sexual
21 offenders who are on supervised probation. The department, in a timely manner,
22 shall provide the attorney general any information, including the offender's level
23 of risk and supporting documentation, concerning individuals required to be
24 registered under this section who are about to be released or placed into the
25 community.

26 b. The attorney general shall conduct a risk assessment of sexual offenders who
27 are not under the custody or supervision of the department. The attorney general
28 may adopt a law enforcement agency's previous assignment of risk level for an
29 individual if the assessment was conducted in a manner substantially similar to
30 the guidelines developed under this subsection.

1 c. The juvenile courts or the agency having legal custody of a juvenile shall conduct
2 a risk assessment of juvenile sexual offenders who are required to register under
3 this section. The juvenile courts or the agency having legal custody of a juvenile
4 shall provide the attorney general any information, including the offender's level
5 of risk and supporting documentation, concerning juveniles required to register
6 and who are about to be released or placed into the community.

7 d. The attorney general shall notify the offender of the risk level assigned to that
8 offender. An offender may request a review of that determination with the attorney
9 general's sexual offender risk assessment committee and may present any
10 information that the offender believes may lower the assigned risk level.

11 13. An individual assessed as a high-risk sexual offender in accordance with
12 subsection 12, may not reside within five hundred feet [152.4 meters] of a public or
13 nonpublic preschool or elementary, middle, or high school.

14 14. Relevant and necessary conviction and registration information must be disclosed to
15 the public by a law enforcement agency if the individual is a moderate or high risk and
16 the agency determines that disclosure of the conviction and registration information is
17 necessary for public protection. The attorney general shall develop guidelines for
18 public disclosure of offender registration information. Public disclosure may include
19 internet access if the offender:

20 a. Is required to register for a lifetime under subsection 8;

21 b. Has been determined to be a high risk to the public by the department, the
22 attorney general, or the courts, according to guidelines developed by those
23 agencies; or

24 c. Has been determined to be a high risk to the public by an agency of another state
25 or the federal government.

26 If the offender has been determined to be a moderate risk, public disclosure must
27 include, at a minimum, notification of the offense to the victim registered under chapter
28 12.1-34 and to any agency, civic organization, or group of persons who have
29 characteristics similar to those of a victim of the offender. Upon request, law
30 enforcement agencies may release conviction and registration information regarding
31 low-risk, moderate-risk, or high-risk offenders.

- 1 15. A state officer, law enforcement agency, or public school district or governing body of a
2 nonpublic school or any appointee, officer, or employee of those entities is not subject
3 to civil or criminal liability for making risk determinations, allowing a sexual offender to
4 attend a school function under section 12.1-20-25, or for disclosing or for failing to
5 disclose information as permitted by this section.
- 6 16. If a juvenile is adjudicated delinquent and required or ordered to register as a sexual
7 offender or as an offender against a child under this section, the juvenile shall comply
8 with the registration requirements in this section. Notwithstanding any other provision
9 of law, a law enforcement agency shall register a juvenile offender in the same manner
10 as adult offenders and may release any relevant and necessary information on file to
11 other law enforcement agencies, the department of health and human services, or the
12 public if disclosure is necessary to protect public health or safety. The law enforcement
13 agency shall release any relevant and necessary information on file to the
14 superintendent or principal of the school the juvenile attends. The school
15 administration shall notify others in similar positions if the juvenile transfers to another
16 learning institution in or outside the state.
- 17 17. If an individual has been required to register as a sexual offender or an offender
18 against a child under section 12.1-32-15 or former section 27-20-52.1 before August 1,
19 1999, the individual may petition the court to be removed from the offender list if
20 registration is no longer mandatory for that individual. In considering the petition, the
21 court shall comply with the requirements of this section.
- 22 18. A sexual offender who is currently assigned a moderate or high-risk level by the
23 attorney general may not use a state park of this state as a residence or residential
24 address to comply with the registration requirements of this section. Before arriving at
25 a state park for overnight lodging or camping, a sexual offender who is assigned a
26 moderate or high-risk level by the attorney general shall notify a parks and recreation
27 department law enforcement officer at the state park where the sexual offender will be
28 staying.
- 29 19. When an individual who is required to register pursuant to this section plans to travel
30 outside of the United States, at least twenty-one days before the intended travel, the
31 individual shall inform the agency with which the individual last registered the

- 1 individual's residence address the details of the intended travel. Upon receipt of the
- 2 information from the registering law enforcement agency, the attorney general shall
- 3 report the travel to the United States marshal service.