

Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENTS TO
SECOND ENGROSSMENT**

REENGROSSED SENATE BILL NO. 2307

Introduced by

Senators Boehm, Erbele, Hogue, Weston

Representatives Steiner, Tveit

1 A BILL for an Act to create and enact a new subsection to section 12.1-27.1-01~~and two, a new~~
2 ~~sections~~section to chapter 12.1-27.1, a new section to chapter 15.1-07, and a new section to
3 chapter 40-38 of the North Dakota Century Code, relating to the definition of a public library,
4 ~~required safety policies and technology protection measures, and the state's attorney's review~~
5 of public libraries, and school districts, ~~and state agencies~~ for compliance with statutes
6 protecting minors from explicit sexual material, and compliance with the Children's Internet
7 Protection Act; to amend and reenact subsection 5 of section 12.1-27.1-01, subsection 2 of
8 section 12.1-27.1-03.1, and sections 12.1-27.1-03.5 and 12.1-27.1-11 of the North Dakota
9 Century Code, relating to obscenity control; to provide for a report to the legislative
10 management; and to provide a penalty.

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

12 **SECTION 1. AMENDMENT.** Subsection 5 of section 12.1-27.1-01 of the North Dakota
13 Century Code is amended and reenacted as follows:

- 14 5. As used in this chapter, the terms "obscene material" and "obscene performance"
15 mean material or a performance which:
- 16 a. Taken as a whole, the average person, applying contemporary North Dakota
17 standards, would find predominantly appeals to a prurient interest;
 - 18 b. Depicts or describes in a patently offensive manner sexual conduct, whether
19 normal or perverted; and

- 1 c. Taken as a whole, the reasonable person would find lacking in serious literary,
2 artistic, political, or scientific value.

3 Whether material or a performance is obscene must be judged with reference to
4 ~~ordinary~~reasonable adults, unless it appears from the character of the material or the
5 circumstances of its dissemination that the material or performance is designed for
6 minors or other specially susceptible audience, in which case the material or
7 performance must be judged with reference to that type of audience.

8 **SECTION 2.** A new subsection to section 12.1-27.1-01 of the North Dakota Century Code is
9 created and enacted as follows:

10 As used in this chapter, the term "public library" means a library containing collections
11 of books or periodicals or both for the general population to read, borrow, or refer to
12 which is supported with funds derived from taxation.

13 **SECTION 3. AMENDMENT.** Subsection 2 of section 12.1-27.1-03.1 of the North Dakota
14 Century Code is amended and reenacted as follows:

15 2. As used in this section:

16 a. "Nude or partially denuded human figures" means less than completely and
17 opaquely covered human genitals, pubic regions, female breasts or a female
18 breast, if the breast or breasts are exposed below a point immediately above the
19 top of the areola, or human buttocks; and includes human male genitals in a
20 discernibly turgid state even if completely and opaquely covered.

21 b. "Where minors are or may be invited as a part of the general public" includes any
22 public roadway or public walkway, public library in an area easily accessible to
23 minors, or public school library.

24 c. The above ~~shall~~may not be construed to include a ~~bona-fide school~~, college,
25 university, museum, ~~public library~~, or art gallery.

26 **SECTION 4. AMENDMENT.** Section 12.1-27.1-03.5 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **12.1-27.1-03.5. Public libraries and school districts prohibited from maintaining**
29 **explicit sexual material - Report.**

30 1. As used in this section:

31 a. "Explicit sexual material" means any material which:

- 1 (1) Taken as a whole, appeals to the prurient interest of minors;
- 2 (2) Is patently offensive to prevailing standards in the adult community in North
- 3 Dakota as a whole with respect to what is suitable material for minors; and
- 4 (3) Taken as a whole, lacks serious literary, artistic, political, or scientific value
- 5 for minors.
- 6 b. "Public library" means a library established under chapter 40-38.
- 7 c. "School district" includes a school library or classroom library under the control of
- 8 the school district.
- 9 2. A public library or a school district may not maintain in ~~its children's collection-~~
- 10 ~~inventory books~~ an area easily accessible to minors ~~that contain~~ explicit sexual
- 11 material.
- 12 3. By January 1, ~~2024~~2026, each public library and school district shall develop a policy
- 13 and process for reviewing library collections to ensure conformance with the
- 14 requirements of this section. The policy must include a procedure:
- 15 a. For the ~~removal or~~ relocation of explicit sexual material in ~~the public~~ a library to an
- 16 area in the library not easily accessible to minors;
- 17 b. For the development of a book and media collection that is appropriate for the
- 18 age and maturity levels of the individuals who may access the materials, and
- 19 which is suitable for, and consistent with, the purpose of the library or school
- 20 district;
- 21 c. For the ~~public library to receive, evaluate, and respond to~~ relocation of materials
- 22 to an area not easily accessible to minors, upon a request from an individual
- 23 regarding the removal or relocation of to relocate one or more of the books or
- 24 other materials in the library collection containing explicit sexual material in the
- 25 library collection; and
- 26 d. For the activation of a diverse decisionmaking committee to reconsider the
- 27 relocation of explicit sexual material in the library collection, if the individual is
- 28 unsatisfied with the result under subdivision c;
- 29 e. To refer an individual to section 76 of this Act, if the individual is unsatisfied with
- 30 the result of the reconsideration under subdivision d; and

1 f. To periodically review the library collection to ensure ~~the library collection does-~~
2 ~~not contain explicit sexual material in the children's collection~~compliance with this
3 section.

4 4. Each public library and school district shall provide a compliance report to the
5 legislative management before May 1, ~~2024~~2026, on the implementation of collection
6 development and relocation of materials policies as required by this section and to
7 ensure sufficient compliance with this section.

8 **SECTION 5. AMENDMENT.** Section 12.1-27.1-11 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **12.1-27.1-11. Exceptions to criminal liability.**

11 Sections 12.1-27.1-01 and 12.1-27.1-03 ~~shall~~may not apply to the possession or distribution
12 of material in the course of law enforcement, judicial, or legislative activities; or to the
13 possession of material by a ~~bona fide school~~, college, university, museum, or public library for
14 limited access for educational research purposes carried on at ~~such an~~the institution by adults
15 only. Sections 12.1-27.1-01 and 12.1-27.1-03 ~~shall also~~may not apply to a person who is
16 returning material, found to be obscene, to the distributor or publisher initially delivering it to the
17 person returning it.

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

20 ~~**Safety policies and technology protection measures required – Report.**~~

21 ~~**1. As used in this section:**~~

22 ~~**a. "Explicit sexual material" means the term as defined under section**~~
23 ~~**12.1-27.1-03.5.**~~

24 ~~**b. "Public library" does not include the state library.**~~

25 ~~**c. "State agency" does not include the state library or institutions of higher**~~
26 ~~**education.**~~

27 ~~**2. A school district, state agency, or public library may offer digital or online library**~~
28 ~~**database resources to students in kindergarten through grade twelve if the person**~~
29 ~~**providing the resources verifies all the resources comply with subsection 3.**~~

- 1 ~~3. Digital or online library database resources offered by a school district, state agency,~~
2 ~~or public library to students in kindergarten through grade twelve must have safety~~
3 ~~policies and technology protection measures that:~~
 - 4 ~~a. Prohibit and prevent a user of the resource from sending, receiving, viewing, or~~
5 ~~downloading materials constituting an obscene performance or explicit sexual~~
6 ~~material; and~~
 - 7 ~~b. Filter or block access to explicit sexual material.~~
- 8 ~~4. Notwithstanding any contract provision, if a provider of digital or online library~~
9 ~~resources fails to comply with subsection 3, the school district, state agency, or public~~
10 ~~library shall withhold any further payments to the provider pending verification of~~
11 ~~compliance.~~
- 12 ~~5. If a provider of digital or online library database resources fails to timely verify the~~
13 ~~provider is in compliance with the safety policies and requirements of subsection 3, the~~
14 ~~school district, state agency, or public library shall consider the provider's act of~~
15 ~~noncompliance a breach of contract.~~
- 16 ~~6. A public school library and a public library shall submit an aggregate written report to~~
17 ~~the legislative management no later than December first of each year regarding any:~~
 - 18 ~~a. Issues related to provider compliance with technology protection measures~~
19 ~~required by subsection 3; and~~
 - 20 ~~b. Incidents of complaints regarding accessible materials.~~
- 21 ~~7. By January 1, 2026, each school district, state agency, or public library offering digital~~
22 ~~or online library database resources to students in kindergarten through grade twelve~~
23 ~~shall develop a policy and process for reviewing digital or online library database~~
24 ~~resources to ensure conformance with this section. The policy must include a~~
25 ~~procedure:~~
 - 26 ~~a. For an individual to report to the school district, state agency, or public library~~
27 ~~materials containing explicit sexual material or an obscene performance in the~~
28 ~~digital or online library database resources;~~
 - 29 ~~b. Upon receipt of a report under subdivision a, for the school district, state agency,~~
30 ~~or public library, to provide the report to the provider of digital or online library~~

1 ~~database resources and apprise the individual of the actions taken to comply with~~
2 ~~this section; and~~
3 ~~c. To refer an individual to section 7 of this Act, if the individual believes this section~~
4 ~~is being violated after being apprised of the actions taken to comply with the~~
5 ~~section.~~

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

8 **State's attorney - Obscenity review procedure - School districts - State agencies --**
9 **Public libraries - Penalty.**

- 10 1. Any interested individual who has exhausted the procedures under section
11 12.1-27.1-03.5 or section 6 of this Act may request, in the manner prescribed by the
12 local state's attorney, the local state's attorney's opinion to review an alleged violation
13 under section 12.1-27.1-03.5 or section 6 of this Act. Within sixty days of receiving the
14 request, the state's attorney shall issue an opinion on the alleged violation to the
15 interested individual, and the provider of digital or online library database resources, if
16 any, and the school district, state agency, or public library under review.
17 2. If the state's attorney determines a public library or state agency has violated section
18 12.1-27.1-03.5 or section 6 of this Act, the state's attorney shall defer any prosecution
19 and notify the public library or state agency. After receiving notice, the public library or
20 state agency shall take corrective action to comply with the violated law within
21 ten days. If the public library or state agency fails to comply with the law within
22 ten days, the state's attorney:
23 a. Shall notify the state treasurer who shall withhold and return funds allocated to
24 the state agency or public library, until the state's attorney has determined the
25 state agency or public library is in compliance with the relevant statute and has
26 notified the state treasurer accordingly; and
27 b. May prosecute for failure to comply with the law.
28 3. If the state's attorney determines a school district has violated section 12.1-27.1-03.5
29 or section 6 of this Act, the state's attorney shall defer any prosecution and notify the
30 school district. After receiving notice, the school district shall take corrective action to

- 1 comply with the violated law within ten days. If the school district fails to comply with
2 the law within ten days, the state's attorney:
- 3 a. Shall notify the superintendent of public instruction who shall withhold funds
4 allocated to the school district until the state's attorney has determined the school
5 district is in compliance with the relevant statute and has notified the
6 superintendent of public instruction accordingly; and
- 7 b. May prosecute for failure to comply with the law.

8 **SECTION 7.** A new section to chapter 15.1-07 of the North Dakota Century Code is created
9 and enacted as follows:

10 **School district policy - Children's Internet Protection Act.**

11 The board of a school district shall adopt and enforce a policy of internet safety, which
12 complies with the Children's Internet Protection Act [Pub. L. 106-554; 114 Stat. 2763A-335].

13 **SECTION 8.** A new section to chapter 40-38 of the North Dakota Century Code is created
14 and enacted as follows:

15 **Public library policy - Children's Internet Protection Act.**

16 Every public library under this chapter shall adopt and enforce a policy of internet safety,
17 which complies with the Children's Internet Protection Act [Pub. L. 106-554; 114 Stat.
18 2763A-335]. This section does not apply to the state library or institutions of higher education.

Children's Internet Protection Act (CIPA)

The Children's Internet Protection Act (CIPA) was enacted by Congress in 2000 to address concerns about children's access to obscene or harmful content over the Internet. CIPA imposes certain requirements on schools or libraries that receive discounts for Internet access or internal connections through the E-rate program – a program that makes certain communications services and products more affordable for eligible schools and libraries. In early 2001, the FCC issued rules implementing CIPA and provided updates to those rules in 2011.

What CIPA requires

Schools and libraries subject to CIPA may not receive the discounts offered by the E-rate program unless they certify that they have an Internet safety policy that includes technology protection measures. The protection measures must block or filter Internet access to pictures that are: (a) obscene; (b) child pornography; or (c) harmful to minors (for computers that are accessed by minors). Before adopting this Internet safety policy, schools and libraries must provide reasonable notice and hold at least one public hearing or meeting to address the proposal.

Schools subject to CIPA have two additional certification requirements: 1) their Internet safety policies must include monitoring the online activities of minors; and 2) as required by the Protecting Children in the 21st Century Act, they must provide for educating minors about appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms, and cyberbullying awareness and response.

Schools and libraries subject to CIPA are required to adopt and implement an Internet safety policy addressing:

- Access by minors to inappropriate matter on the Internet;
- The safety and security of minors when using electronic mail, chat rooms and other forms of direct electronic communications;
- Unauthorized access, including so-called “hacking,” and other unlawful activities by minors online;
- Unauthorized disclosure, use, and dissemination of personal information regarding minors; and
- Measures restricting minors' access to materials harmful to them.

Schools and libraries must certify they are in compliance with CIPA before they can receive E-rate funding.

- CIPA does not apply to schools and libraries receiving discounts only for telecommunications service only;
- An authorized person may disable the blocking or filtering measure during use by an adult to enable access for bona fide research or other lawful purposes.
- CIPA does not require the tracking of Internet use by minors or adults.

Sexually Explicit Material/Pornography

Senate Bill 2307

Pornography Causes Depression and Mental Health Problems

- Youth who are depressed or have delinquent tendencies are known to have higher levels of pornography exposure.¹
- Pornography use is a recognized predictor of depression.²
- Younger age at first pornography viewing is associated with frequency of adult mental health problems.³

Pornography Causes Permissive Sexual Attitudes and Behaviors

- Pornography use, even when infrequent, is associated with abnormal behaviors.⁴
- In males, early exposure to pornography predicted "permissive sexual norms, sexual harassment perpetration" and various forms of sexual behavior.⁵
- Even when controlling for other factors, pornography consumption influences sexual behaviors.⁶
- Adolescents who are exposed to pornography are more likely to have multiple sexual partners.⁷
- Early exposure to pornography is associated with initiation of sexual behavior at a younger age.⁵
- In young men, pornography viewing is associated with higher rates of sexual coercion and violent or abusive behavior.⁸
- Pornography consumption is associated with negative gender attitudes.⁸
- Pornography exposure is associated with substance abuse.⁷

Pornography Contributes to Poor Academic Performance

- Exposure to pornography has been shown to interfere with working memory in a way not seen with exposure to other stimuli, including negative stimuli.⁹
- Sexually explicit images affect the brain's emotion/attention processing.¹⁰
- In early adolescent boys, pornography exposure was associated with reduced academic performance.¹¹

References

American Library Association (ALA)

The ALA has a list of Top 10 Most Challenged Books. The books on the 2023 list have been challenged because they contain sexually explicit graphics and/or language, profanity, violence, perversion material, depictions of rape and incest, and drug use. These books are widely available in public libraries and schools across ND (see attached). The ALA promotes these books during a "Banned Books Week" where they spotlight the books and promote activities and

ways for people to get involved to keep them accessible.[1]

Two examples of these books are *Let's Talk About It* by Erika Moen & Matthew Nolan (targeted for children ages 14 and up) and *Sex is a Funny Word* by Cory Silverberg (not on the list, but available in ND libraries and targeted for children ages 8-11). These books contain graphic images and language normalizing STIs and sexting, encouraging and teaching sexual behaviors, and likening pornography to a "fun, sugary treat." (LTA/ p.165)

The ALA is not interested in protecting children. A statement on their website says, "The ALA stringently and unequivocally maintains that libraries and librarians have an obligation to resist efforts that systematically exclude materials dealing with any subject matter, including sex, gender identity, or sexual orientation. [2]" Another states, "The American Library Association opposes all attempts to restrict access to library services, materials, and facilities based on the age of library users.[3]"

The ALA is not a friend of parents either. As stated in an article from Daily Citizen[4], "instead of taking parents' concerns seriously, the organization's Office for Intellectual Freedom has advice for librarians about how to fight back against parents who believe certain books might be inappropriate for children.[5] It dramatically labels parents' involvement "censorship" and "book banning." The ALA believes children should be able to check out whatever books they want and that they deserve "privacy and confidentiality" - including from parents - in those decisions. [6]

[1] [Banned Books Week](#)

[2] [Access to Library Resources and Services | ALA](#)

[3] [Access to Library Resources and Services for Minors: An Interpretation of the Library Bill of Rights | ALA](#)

[4] [American Library Association Chooses Marxist Lesbian as President-Elect - Daily Citizen](#)

[5] [How to Respond to Challenges and Concerns about Library Resources | ALA](#)

[6] [Library Bill of Rights | ALA](#)

This investigation was conducted in the fall of 2024 the top 10 list itself was from 2023 and yet these books were in the following libraries.

Top 10 Most Challenged Books of 2023

1. *Gender Queer* by Maia Kobabe

Available in:

Grand Forks Public Library

North Dakota State Library

Fargo Public Library

Minot Public Library

Dickinson Public Library

2. *All Boys Aren't Blue* by George M. Johnson

Available in:

Dickinson High School Library

Grand Forks Public Library

McKenzie County Public Library

Bismarck Public Library

Minot Public Library

3. *This Book is Gay* by Juno Dawson

Available in:

Leach Public Library
Fargo Public Library
Minot Public Library
Bismarck Public Library

4. *The Perks of Being a Wallflower* by Stephen Chbosky

Available in:

West Fargo Public Library
Bismarck Public Library
Mandan Public Library
Minot Public Library
Dickinson High School Library
Hatton Public School Library
Hope School Library
Larimore High School Library
Midway High School Library
North Dakota Youth Correctional Library
Iris Swedlund School and Public Library of Velva

5. *Flamer* by Mike Curato

Available in:

West Fargo Public Library
Dickinson Area Public Library
Dickinson High School Library
Minot Public Library
Leach Public Library

6. *The Bluest Eye* by Toni Morrison

Available in:

West Fargo Public Library
North Dakota State Library
Harvey Public Library
Grafton High School Library
Dickinson Area Public Library
Cavalier School Library
Minot Public Library
Beulah Public Library
Washburn Public Library

7. *Me and Earl and the Dying Girl* by Jesse Andrews

Available in:

Dickinson Area Public Library
West Fargo Public Library
Minot Public Library
Morton Mandan Public Library
McLean-Mercer Regional Library-Riverdale
Underwood Public Library
New Salem High School

Turtle Lake-Mercer School Library
Grand Forks Public Library
Larimore High School Library
Midway High School Library
North Dakota Youth Correctional Library

8. *Tricks* by Ellen Hopkins

Available in:

Minot Public Library
Center Oliver Library
Dickinson Area Public Library
Finley-Sharon School Library
Grafton High School Library
Grand Forks Public Library
Hope School Library
Leach Public Library
Midway High School Library
North Border-Pembina School and City Library
North Border-Walhalla School Library
North Dakota State Hospital-Health Sciences Library
North Dakota Youth Correctional Library
Northwood School Library
Iris Swedlund School and Public Library of Velva

9. *Let's Talk About It* by Erika Moen and Matthew Nolan

Available in:

Dickinson Area Public Library
Grand Forks Public Library
West Fargo Public Library
Minot Public Library

10. *Sold* by Patricia McCormick

Available in:

Fargo Public Library
Minot Public Library
United Tribes Technical College Library
Saint Mary's Central High School
Beulah High School Library
Theodore Jamerson Elementary School
New Salem High School
Turtle Lake-Mercer School Library