

**2025 HOUSE JUDICIARY**

**HB 1386**

# 2025 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Room JW327B, State Capitol

HB 1386  
1/20/2025

A BILL for an Act to amend and reenact sections 12.1-27.2-01 and 12.1-27.2-04.1 of the North Dakota Century Code, relating to a prohibition on possessing certain computer-generated images; and to provide a penalty.

10:31 a.m. Chairman Klemin opened the hearing.

Members Present: Chairman Klemin, Vice-Chairman Karls, Vice-Chairman Vetter, Representatives Christianson, Hoverson, Johnston, McLeod, Olson, Satrom, Tveit, VanWinkle, Wolff, Schneider

Members Absent: Representative Henderson

## **Discussion Topics:**

- Designation of penalties
- HB 1386 and HB 1351 comparison
- Computer-generated images

10:31 a.m. Josh Christy, North Dakota Representative for District 27, introduced the bill, testified in favor.

10:35 a.m. Claire Ness, Chief Deputy Attorney General, testified in favor and provided testimony #30251.

11:02 a.m. Terry Effertz, TechND, testified in favor.

11:03 a.m. Anna Frissell, Board member of the Children's Advocacy Centers of North Dakota and member of the Legislative Task Force, testified in favor and provided testimony #30248.

## **Additional written testimony:**

Nicolas Cullen, Bismarck, North Dakota, submitted testimony in favor #29904

Justin Hillman, Dakota Advocate for the National Association for Rational Sexual Offense Laws, submitted testimony in favor #29960

Jacob Thomsen, Policy Analyst for the North Dakota Family Alliance Legislative Action, submitted testimony in favor #30087

Greg Kasowski, Executive Director for the Children's Advocacy Centers of North Dakota, submitted testimony in favor #30096

11:07 a.m. Chairman Klemin closed the hearing.

*Wyatt Armstrong, Committee Clerk*

HB 1386  
In Support Of

House Judiciary Committee,

I am writing to you in support of HB 1386. Sexually explicit videos and images, especially as minors (even if AI) require harsh prosecution. Even though this may be AI generated, it has the potential to create a lust for the real thing and could put our children in harms way. Therefore, I request a DO PASS. Thank you for your consideration.

Nicolas Cullen



**RE: Support for HB1386, but Not Registration Requirements**

Dear Members of the North Dakota House Judiciary Committee,

I am writing on behalf of the National Association for Rational Sexual Offense Laws (NARSOL) North Dakota Advocates regarding House Bill 1386, which proposes to amend sections 12.1-27.2-01 and 12.1-27.2-04.1 of the North Dakota Century Code, relating to the prohibition of possessing certain computer-generated images.

NARSOL strongly supports the bill's intent to prohibit child sexual abuse materials, including computer-generated images. We recognize the serious harm caused by such content and agree that legislative action is necessary to address this issue.

However, we must express our opposition to adjusting the severity and reinforcing the use of the sex offense registry by amending related registerable offenses as proposed in this bill. Our position is based on extensive research and evidence regarding the ineffectiveness of sex offender registries. We urge the committee to consider the following points:

1. Registries do not effectively deter crime. Studies have consistently shown that sex offender registries do not significantly reduce sexual offense rates or protect the public.
2. Registries do not reduce recidivism rates. Research indicates that registries have little to no impact on recidivism rates among those required to register.
3. Registration requirements create substantial obstacles for individuals attempting to reintegrate into society, often hindering their ability to find housing, employment, and support systems.
4. The effects of registration extend beyond the individual, causing undue hardship on family members, including children of registrants.
5. The maintenance and enforcement of registries consume significant law enforcement and administrative resources that could be better utilized for more effective public safety measures.

We believe that the prohibition of child sexual abuse materials, including computer-generated images, can be effectively addressed without expanding the scope of the registry. Alternative approaches, such as diversion programs, education programs, and support for victims, may prove more effective in combating this issue.

NARSOL respectfully requests that the committee reconsider the inclusion of this new offense as a registerable crime.

Thank you for your consideration of our position on this important issue.

Sincerely,

Justin L. Hillman  
NARSOL Dakota's Advocates  
jhillman@narsol.org

Cc: Brenda V. Jones, Executive Director (bjones@narsol.org)



### Testimony in Support of House Bill 1386

Jacob Thomsen, Policy Analyst  
North Dakota Family Alliance Legislative Action  
January 20, 2025

Chairman Klemin and honorable members of the House Judiciary Committee,

North Dakota Family Alliance Legislative Action would like to testify in support of House Bill 1386 and respectfully request that you render a "DO PASS" on this bill.

Our organization believes that human beings are created with inherent dignity and worth. Artificially manufactured sexually explicit images and videos violate a person's dignity and can significantly damage a person's self-worth and image among their peers. These images and videos are particularly damaging because the victim who this content is created of has no consent over the content's creation and distribution.

We support this bill because it seeks to protect the dignity and worth of people and protects against nonconsensual creation and distribution of artificially created sexually explicit images and videos.

For these reasons, North Dakota Family Alliance Legislative Action respectfully requests that you please vote House Bill 1386 out of committee with a "DO PASS" recommendation.

Thank you for the opportunity to provide this testimony, and feel free to contact us if you have any questions.

Sincerely,

Jacob Thomsen  
Policy Analyst  
North Dakota Family Alliance Legislative Action



## CHILDREN'S ADVOCACY CENTERS OF NORTH DAKOTA

House Judiciary Committee  
Testimony In Support of House Bill #1386  
1-20-24

Chairman Klemin and Members of the House Judiciary Committee,

My name is Greg Kasowski, Director of the Children's Advocacy Centers of North Dakota. I am here in support of House Bill 1386.

Our Children's Advocacy Centers work daily with children who have experienced child sexual abuse and other forms of child maltreatment. We see firsthand the devastating impact of these crimes. The emergence of AI-generated child sexually abusive materials (CSAM) represents a terrifying new frontier in child maltreatment.

Traditional CSAM involves the actual abuse of a child. AI-generated CSAM, while not involving a real-time physical act of abuse, is no less harmful. It creates hyper-realistic depictions of children engaged in sexual activity, which perpetuates the sexualization and exploitation of minors.

### **The Threat of AI-Generated CSAM:**

- **Proliferation and Accessibility:** AI technology makes it easier and faster than ever before to create and disseminate this horrific material. Although some of the more popular generative AI platforms have set technological guardrails, the proverbial "cat is still out of the bag." Perpetrators with minimal technical skill have been able to generate countless images and videos of child sexual abuse already.
- **Normalization and Desensitization:** The widespread availability of AI-generated CSAM risks normalizing the sexualization of children. It also desensitizes our society to the harm of child sexual abuse, which can have devastating consequences. Condoning its presence is frightening.
- **May Lead to Hands-On Child Sexual Abuse:** Although no studies exist as to whether AI-generated CSAM consumption leads to hands-on child sexual abuse, studies have shown that a majority of perpetrators of *traditional* CSAM also conducted hands-on child sexual abuse.<sup>1</sup>
- **Difficulty in Detection:** AI-generated CSAM can be incredibly realistic, making it difficult for even trained professionals to distinguish it from traditional CSAM. This poses significant challenges for law enforcement in identifying and prosecuting offenders.

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<sup>1</sup> <https://www.tandfonline.com/doi/abs/10.1080/13552600.2014.886729>





**CHILDREN'S  
ADVOCACY  
CENTERS**  
OF NORTH DAKOTA

**Why Criminalization is Necessary:**

- **Deterrence:** Criminalizing the creation, possession, and distribution of AI-generated CSAM sends a clear message that this type of content will not be tolerated in our society. It serves as a deterrent to potential offenders and reinforces the importance of protecting children in North Dakota.
- **Reduction in Vicarious Trauma:** Decreasing the proliferation of AI-generated CSAM would reduce the amount of secondary traumatic stress on the individuals working on the front lines, such as the Internet Crimes Against Children Taskforce (ICAC), prosecutors, and defense attorneys.
- **Protection of Children:** This legislation is essential for protecting children from the severe harm caused by the acceptance of this material. It recognizes that even without a physical act of abuse, the creation and dissemination of AI-generated CSAM constitutes a form of exploitation.
- **Holding Offenders Accountable:** Criminalizing this conduct provides law enforcement and prosecutors with the tools they need to investigate and prosecute those who create and distribute this harmful material.

In conclusion, by criminalizing AI-generated CSAM, we will send a clear message that we will not tolerate the normalization of child sexual abuse in any form in North Dakota.

Mr. Chairmen and members of the committee, I appreciate your time and consideration of this bill and will try to answer any questions.

Sincerely,

Greg Kasowski  
Executive Director  
Children's Advocacy Centers of North Dakota

Children's Advocacy Centers of North Dakota

[www.CACND.org](http://www.CACND.org)  
[director@cacnd.org](mailto:director@cacnd.org)  
701.301.3701



**House Bills 1386 - Computer-generated Images****House Judiciary Committee****January 20, 2025****Submitted by: Anna Frissell**

Honorable Chairman, distinguished members of the Judiciary Committee, North Dakota House of Representatives, thank you for the opportunity to testify today. My name is Anna Frissell and I am a board member of the Children's Advocacy Centers of North Dakota, as well as, a member of the Legislative Task Force for the Prevention of Child Sexual Abuse. I am also a past Executive Director of a North Dakota Children's Advocacy Center and a prosecutor in North Dakota and Minnesota. I wish to note my support for criminalizing the production, possession, distribution, promotion, etc., of certain computer-generated images depicting minors engaged in sexual conduct or a sexual performance.

Under House Bill 1386, the penalty is a C Felony for each image up to nineteen images and a B felony if over twenty images are involved or in several other listed situations. The penalty rises to an A felony if the offense involves sexual abuse or visual representation of an infant or toddler. I support the penalty level of these offenses.

Reviewing the Bill, the language under 12.1-27.2-04.1(2)(d), sets forth a B Felony and applies to a "prepubescent minor or a minor under twelve years of age". It is confusing to use two age descriptors: prepubescent and twelve years old. The use of the word "prepubescent" could conceivably extend the age of the minor to thirteen or fourteen. It is clearer to remove the word "prepubescent", leaving the statute applying to an offense involving a minor twelve years of age.

Likewise, the Bill provides that under 12.1-27.2-04.1(3), the violation of this statute is an A Felony when the actions involve an infant or toddler. There is no age noted for the infant or toddler. In order to apply this section of law it will be important to have a specific age set forth in the statute for an infant or toddler.

Thank you for the opportunity to submit testimony. Please contact me if I can be of further assistance.

Anna Frissell  
annarrcac@yahoo.com



HOUSE JUDICIARY COMMITTEE  
JANUARY 20, 2025

TESTIMONY OF CLAIRE NESS  
OFFICE OF ATTORNEY GENERAL  
HOUSE BILL NO. 1386

Chairman Klemin and members of the Committee:

For the record, my name is Claire Ness. I am the Chief Deputy Attorney General, and I appear on behalf of the Attorney General's Office in support of House Bill 1386 (25.1064.01000).

The Attorney General's Office is actively engaged in the fight against child pornography, or child sexual abuse materials (CSAM) as it is more accurately named. The prosecutors in our Criminal Law Division work with State's Attorneys to prosecute individuals for CSAM-related crimes. The Bureau of Criminal Investigations (BCI) – particularly the agents who are members of the Internet Crimes Against Children (ICAC) unit – conducts most investigations in the state involving CSAM and trains law enforcement investigators around the state to do the same. BCI also receives alerts from the National Center for Missing and Exploited Children (NCMEC) when NCMEC identifies known CSAM on an IP address in North Dakota. This triggers an investigation – by BCI or another law enforcement agency – into the location of the IP address, the owner and content of the CSAM, and whether there are any known victims. Our office also has victim-witness advocates to assist the victims of CSAM (and other crimes), and we participate on the Human Trafficking Task Force that works with providers who can help victims of CSAM. We also greatly appreciate all our law enforcement colleagues around the state who conduct investigations of CSAM.

Making, possessing, and trading CSAM is all too common in our state. While NCMEC tips account for only a subset of the actual CSAM investigations conducted by law enforcement, those tips alone are escalating exponentially. For each of the past two years, BCI received well over 1,500 tips from NCMEC. For comparison, in 2019, the number was 379, and in 2020, the number was 585. Now consider that each tip may lead to a device with many images involving multiple victims. And there are many CSAM investigations that develop from information other than NCMEC tips.

Computer generated images and artificial intelligence have opened a new world for the cruel individuals who make, possess, or trade CSAM. These individuals can use computers to generate images or video of children engaged in any sexual conduct they choose, either out of whole cloth (sometimes called virtual CSAM) or by incorporating images of the heads or other body parts of children, such as young relatives or neighbors, into sexual imagery (sometimes called morphed CSAM).

It has been argued by some that the creation of virtual CSAM does not harm children or society. This is incorrect, especially in today's world where virtual CSAM can be indistinguishable from CSAM produced with minors and likely will fall within the legal definition of obscenity. CSAM, virtual, morphed, or otherwise, creates more child victims. It contributes to the global demand for more CSAM, which is predominantly made by sexually abusing children. Also, criminals who possess CSAM also are much more likely than not to "touch offend" (sexually abuse) a child.

In 2002, the U.S. Supreme Court decided that some virtual CSAM had protection under the First Amendment. That decision was based, in part, on the fact that virtual CSAM at the time was made using very early forms of computer-generated imagery that did not look like living

people. That is not the case today, and the Court may reach a different result if faced with the same question now. Also, in its 2002 decision regarding virtual CSAM, the Court reaffirmed its earlier holding that “obscenity” is not protected by the First Amendment.<sup>1</sup> So any virtual CSAM that constitutes obscenity is not protected speech even under the 2002 opinion.

House Bill 1386 will (1) ensure prosecutors in North Dakota can charge individuals who make, possess, or trade computer-generated CSAM and (2) enhance penalties for possession of any CSAM involving the most egregious and brutal forms of child abuse, for those possessing significant quantities of CSAM, and for repeat offenders.

Section 1 of the bill adds two definitions to our CSAM definition section to cover computer-generated images of minors, including images of a minor’s face or other distinguishing characteristics that have been adapted or modified for use in CSAM.

Section 2 of the bill adds the defined computer-generated images to the list of materials it is unlawful to possess. It also enhances the penalty for possession from a class C felony to a class B felony for possession of particularly heinous forms of CSAM or possession by a registered sex offender. The forms of abuse that trigger this enhanced penalty are identified on page 2 of the bill. Section 2 also enhances the penalty for possession to a class A felony for possession of CSAM involving an infant or toddler.

People sometimes are surprised when members of our office talk about the volume or severity of CSAM in North Dakota. I considered bringing a read-out of a video involving CSAM to illustrate for the committee the horrific nature of what happens to these children. I chose not to

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<sup>1</sup> Ashcroft v. Free Speech Coalition, 535 U.S. 234 (2002)(to be obscene, “the work, taken as a whole, appeals to the prurient interest, is patently offensive in light of community standards, and lacks serious literary, artistic, political, or scientific value.”)(citing Miller v. California, 413 U.S. 15 (1973)).

do so, but I ask this committee not to forget the children when you consider this bill and the penalties it will provide.

Due to the severity of these crimes, the potentially lifelong physical and emotional impacts on the victims, and the short sentences imposed for these crimes under the current statute, the Attorney General's Office supports a DO PASS recommendation on House Bill 1386.

The Attorney General's Office does not take a position on the final provision of the bill on page 3, lines 3-7.

# 2025 HOUSE STANDING COMMITTEE MINUTES

## Judiciary Committee Room JW327B, State Capitol

HB 1386  
1/22/2025

A BILL for an Act to amend and reenact sections 12.1-27.2-01 and 12.1-27.2-04.1 of the North Dakota Century Code, relating to a prohibition on possessing certain computer-generated images; and to provide a penalty.

2:57 p.m. Chairman Klemin opened the hearing.

Members Present: Chairman Klemin, Vice-Chairman Karls, Vice-Chairman Vetter, Representatives Christianson, Henderson, Hoverson, Johnston, McLeod, S. Olson, Satrom, Tveit, VanWinkle, Wolff, Schneider

### Discussion Topics:

- Enhanced penalties for images of children under the age of 12
- Obscenity chapter of law
- Definition of a minor
- Inclusion of fictitious individuals in generated images

3:00 p.m. Representative Karls moved to Amend LC: 25.1064.01001, testimony #44906.

3:00 p.m. Representative McLeod seconded the motion.

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Steve Vetter	Y
Representative Nels Christianson	Y
Representative Donna Henderson	Y
Representative Jeff Hoverson	Y
Representative Daniel Johnston	A
Representative Carrie McLeod	Y
Representative SuAnn Olson	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Bill Tveit	Y
Representative Lori VanWinkle	Y
Representative Christina Wolff	Y

3:07 p.m. Motion passed 13-0-1

3:07 p.m. Representative Karls moved a Do Pass as Amended.

3:07 p.m. Representative McLeod seconded the motion.

<b>Representatives</b>	<b>Vote</b>
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Steve Vetter	N
Representative Nels Christianson	N
Representative Donna Henderson	Y
Representative Jeff Hoverson	N
Representative Daniel Johnston	N
Representative Carrie McLeod	Y
Representative SuAnn Olson	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Bill Tveit	Y
Representative Lori VanWinkle	N
Representative Christina Wolff	N

3:23 p.m. Motion passed 8-6-0

3:24 p.m. Representative Satrom will carry the bill.

3:26 p.m. Representative Satrom motioned to Reconsider.

3:27 p.m. Representative Henderson seconded the motion.

<b>Representatives</b>	<b>Vote</b>
Representative Lawrence R. Klemin	N
Representative Karen Karls	N
Representative Steve Vetter	Y
Representative Nels Christianson	Y
Representative Donna Henderson	Y
Representative Jeff Hoverson	Y
Representative Daniel Johnston	Y
Representative Carrie McLeod	N
Representative SuAnn Olson	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	N
Representative Bill Tveit	N
Representative Lori VanWinkle	Y
Representative Christina Wolff	Y

3:28 p.m. Motion passed 9-5-0

3:37 p.m. Representative Wolff Moved a Do Pass as Amended.

3:37 p.m. Representative Karls seconded the motion.



<b>Representatives</b>	<b>Vote</b>
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Steve Vetter	N
Representative Nels Christianson	N
Representative Donna Henderson	Y
Representative Jeff Hoverson	Y
Representative Daniel Johnston	N
Representative Carrie McLeod	Y
Representative SuAnn Olson	Y
Representative Bernie Satrom	N
Representative Mary Schneider	Y
Representative Bill Tveit	Y
Representative Lori VanWinkle	N
Representative Christina Wolff	Y

3:38 p.m. Motion passed 9-5-0

3:39 p.m. Representative S. Olson will carry the bill.

3:39 p.m. Chairman Klemin closed the hearing.

*Wyatt Armstrong, Committee Clerk*

*Bill was reconsidered on 01/27/25.*

Sixty-ninth  
Legislative Assembly  
of North Dakota

**PROPOSED AMENDMENTS TO**

**HOUSE BILL NO. 1386**

Introduced by

Representatives Christy, Bahl, Berg, Conmy, Grindberg, Hoverson, Mitskog, J. Olson

Senators Boschee, Myrdal, Sickler, Thomas

*JB 1-22-25  
10/3*

1 A BILL for an Act to amend and reenact sections 12.1-27.2-01 and 12.1-27.2-04.1 of the North  
2 Dakota Century Code, relating to a prohibition on possessing certain computer-generated  
3 images; 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 Code is  
6 amended and reenacted as follows:

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

8 As used in this chapter:

9 1. "Computer-generated image" means an image or visual representation created  
10 through the use of artificial intelligence or other computer program.

11 2. "Minor" means an individual under eighteen years of age or any visual representation  
12 used, created, adapted, altered, or modified to appear to depict a minor by face,  
13 likeness, or other distinguishing characteristics.

14 3. "Obscene sexual performance" means any performance which includes sexual  
15 conduct by a minor in any obscene material or obscene performance, as defined in  
16 section 12.1-27.1-01.

17 ~~2.4.~~ "Performance" means any play, motion picture, photograph, dance, or other visual  
18 representation, or any part of a performance.



Jim 2013

1     ~~3.5.~~ "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail,  
2             deliver, transfer, transmit, ship, transport, publish, distribute, circulate, disseminate,  
3             present, exhibit, or advertise.

4     ~~4.6.~~ "Sexual conduct" means actual or simulated:

- 5             a. Sexual intercourse;
- 6             b. Sodomy, as defined under section 12.1-27.1-01;
- 7             c. Sexual bestiality;
- 8             d. Masturbation;
- 9             e. Sadomasochistic abuse, as defined under section 12.1-27.1-01;
- 10            f. Lewd exhibition of the buttocks, breasts, or genitals;
- 11            g. Nude or partially denuded human figure, as defined in section 12.1-27.1-03.1, if  
12               depicted for the purpose of the sexual stimulation or the sexual gratification of  
13               any individual who may view such depiction; or
- 14            h. Physical contact with a person's clothed or unclothed genitals, pubic area,  
15               buttocks, or breasts. It is not necessary that the minor know that he or she is  
16               participating in the described conduct, or any aspect of it.

17     ~~5.7.~~ "Sexual performance" means any performance which includes sexual conduct by a  
18             minor.

19     ~~6.8.~~ "Simulated" means the explicit depiction of any of the conduct set forth in subsection 4  
20             which creates the appearance of actual sexual conduct and which exhibits any nude  
21             or partially denuded human figure, as defined in section 12.1-27.1-03.1.

22     **SECTION 2. AMENDMENT.** Section 12.1-27.2-04.1 of the North Dakota Century Code is  
23     amended and reenacted as follows:

24     **12.1-27.2-04.1. Possession of certain materials prohibited.**

25     1. A person is guilty of a class C felony if, knowing of its character and content, that  
26             person knowingly possesses any motion picture, computer-generated image,  
27             photograph, or other visual representation that includes sexual conduct by a minor.

28     2. An individual violating this section is guilty of a class B felony if:

- 29             a. The offense involved twenty or more images;
- 30             b. The offense involved sadistic or masochistic conduct or other depictions of  
31               violence;

- 1           c. The offense involved sexual bestiality;  
2           d. The offense involves ~~a prepubescent minor or~~ a minor under twelve years of age;  
3           or  
4           e. The individual has previously been convicted of an offense subject to registration  
5           under section 12.1-32-15.  
6       3. An individual violating this section is guilty of a class A felony if the offense involved  
7       sexual abuse or visual representation of ~~an infant or toddler~~ a minor under three years  
8       of age.  
9       4. This section does not impose liability on the provider of an interactive computer  
10       service, as defined in 47 U.S.C. 230, or an internet service provider, cloud computer  
11       provider, cybersecurity provider, communication service provider, or information  
12       service or telecommunication service network, as defined in 47 U.S.C. 153, for any  
13       content provided by another person.

25.1064.01001  
Title.

Prepared by the Legislative Council  
staff for Representative Karls  
January 21, 2025

Sixty-ninth  
Legislative Assembly  
of North Dakota

## PROPOSED AMENDMENTS TO

### HOUSE BILL NO. 1386

Introduced by

Representatives Christy, Bahl, Berg, Conmy, Grindberg, Hoverson, Mitskog, J. Olson

Senators Boschee, Myrdal, Sickler, Thomas

- 1 A BILL for an Act to amend and reenact sections 12.1-27.2-01 and 12.1-27.2-04.1 of the North  
2 Dakota Century Code, relating to a prohibition on possessing certain computer-generated  
3 images; 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 Code is  
6 amended and reenacted as follows:

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

8 As used in this chapter:

- 9 1. "Computer-generated image" means an image or visual representation created  
10 through the use of artificial intelligence or other computer program.  
11 2. "Minor" means an individual under eighteen years of age or any visual representation  
12 used, created, adapted, altered, or modified to appear to depict a minor by face,  
13 likeness, or other distinguishing characteristics.  
14 3. "Obscene sexual performance" means any performance which includes sexual  
15 conduct by a minor in any obscene material or obscene performance, as defined in  
16 section 12.1-27.1-01.  
17 ~~2.4.~~ "Performance" means any play, motion picture, photograph, dance, or other visual  
18 representation, or any part of a performance.



1     ~~3-5.~~ "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail,  
2           deliver, transfer, transmit, ship, transport, publish, distribute, circulate, disseminate,  
3           present, exhibit, or advertise.

4     ~~4-6.~~ "Sexual conduct" means actual or simulated:

- 5         a. Sexual intercourse;
- 6         b. Sodomy, as defined under section 12.1-27.1-01;
- 7         c. Sexual bestiality;
- 8         d. Masturbation;
- 9         e. Sadomasochistic abuse, as defined under section 12.1-27.1-01;
- 10        f. Lewd exhibition of the buttocks, breasts, or genitals;
- 11        g. Nude or partially denuded human figure, as defined in section 12.1-27.1-03.1, if  
12           depicted for the purpose of the sexual stimulation or the sexual gratification of  
13           any individual who may view such depiction; or
- 14        h. Physical contact with a person's clothed or unclothed genitals, pubic area,  
15           buttocks, or breasts. It is not necessary that the minor know that he or she is  
16           participating in the described conduct, or any aspect of it.

17     ~~5-7.~~ "Sexual performance" means any performance which includes sexual conduct by a  
18           minor.

19     ~~6-8.~~ "Simulated" means the explicit depiction of any of the conduct set forth in subsection 4  
20           which creates the appearance of actual sexual conduct and which exhibits any nude  
21           or partially denuded human figure, as defined in section 12.1-27.1-03.1.

22     **SECTION 2. AMENDMENT.** Section 12.1-27.2-04.1 of the North Dakota Century Code is  
23     amended and reenacted as follows:

24     **12.1-27.2-04.1. Possession of certain materials prohibited.**

- 25        1. A person is guilty of a class C felony if, knowing of its character and content, that  
26           person knowingly possesses any motion picture, computer-generated image,  
27           photograph, or other visual representation that includes sexual conduct by a minor.
- 28        2. An individual violating this section is guilty of a class B felony if:
  - 29           a. The offense involved twenty or more images;
  - 30           b. The offense involved sadistic or masochistic conduct or other depictions of  
31           violence;

- 1           c. The offense involved sexual bestiality;
- 2           d. The offense involves ~~a prepubescent minor or~~ a minor under twelve years of age;
- 3                 or
- 4           e. The individual has previously been convicted of an offense subject to registration
- 5                 under section 12.1-32-15.
- 6        3. An individual violating this section is guilty of a class A felony if the offense involved
- 7           sexual abuse or visual representation of ~~an infant or toddler~~ a minor under three years
- 8                 of age.
- 9        4. This section does not impose liability on the provider of an interactive computer
- 10           service, as defined in 47 U.S.C. 230, or an internet service provider, cloud computer
- 11           provider, cybersecurity provider, communication service provider, or information
- 12           service or telecommunication service network, as defined in 47 U.S.C. 153, for any
- 13           content provided by another person.

# 2025 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Room JW327B, State Capitol

HB 1386  
1/27/2025

A BILL for an Act to amend and reenact sections 12.1-27.2-01 and 12.1-27.2-04.1 of the North Dakota Century Code, relating to a prohibition on possessing certain computer-generated images; and to provide a penalty.

2:51 p.m. Chairman Klemin opened the hearing.

Members Present: Chairman Klemin, Vice-Chairman Vetter, Representatives Christianson, Hoverson, Johnston, McLeod, Olson, Satrom, Tveit, VanWinkle, Wolff, Schneider

Members Absent: Vice Chair Karls, Representative Henderson

## **Discussion Topics:**

- Victims of computer-generated images
- Penalty for possessing 20 or more computer-generated images

2:52 p.m. Representative Olson moved to Reconsider.

2:54 p.m. Representative Wolff seconded the motion.

<b>Representatives</b>	<b>Vote</b>
Representative Lawrence R. Klemin	Y
Representative Karen Karls	A
Representative Steve Vetter	Y
Representative Nels Christianson	Y
Representative Donna Henderson	A
Representative Jeff Hoverson	A
Representative Daniel Johnston	Y
Representative Carrie McLeod	Y
Representative SuAnn Olson	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Bill Tveit	Y
Representative Lori VanWinkle	Y
Representative Christina Wolff	Y

2:58 p.m. Motion passed 11-0-3.

3:14 p.m. Representative Olson moved to Amend and remove lines 8-12 on page 3.

3:14 p.m. Representative Schneider seconded the motion.

<b>Representatives</b>	<b>Vote</b>
Representative Lawrence R. Klemin	Y
Representative Karen Karls	A
Representative Steve Vetter	N
Representative Nels Christianson	N
Representative Donna Henderson	A
Representative Jeff Hoverson	N
Representative Daniel Johnston	N
Representative Carrie McLeod	Y
Representative SuAnn Olson	Y
Representative Bernie Satrom	N
Representative Mary Schneider	Y
Representative Bill Tveit	A
Representative Lori VanWinkle	Y
Representative Christina Wolff	Y

3:14 p.m. Motion passed 6-5-3

3:17 p.m. Representative Vetter moved to further Amend and remove the overstrike on page 3 lines 6 and 7.

3:17 p.m. Representative Olson seconded the motion.

<b>Representatives</b>	<b>Vote</b>
Representative Lawrence R. Klemin	Y
Representative Karen Karls	A
Representative Steve Vetter	Y
Representative Nels Christianson	Y
Representative Donna Henderson	A
Representative Jeff Hoverson	Y
Representative Daniel Johnston	Y
Representative Carrie McLeod	Y
Representative SuAnn Olson	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Bill Tveit	A
Representative Lori VanWinkle	Y
Representative Christina Wolff	Y

3:25 p.m. Motion passed 11-0-3

3:24 p.m. Rep Olson moved to further amend lines 11-14 on the definition of

a Minor. 3:25 p.m. Representative Schneider seconded the motion.

<b>Representatives</b>	<b>Vote</b>
Representative Lawrence R. Klemin	Y

Representative Karen Karls	A
Representative Steve Vetter	Y
Representative Nels Christianson	Y
Representative Donna Henderson	A
Representative Jeff Hoverson	Y
Representative Daniel Johnston	Y
Representative Carrie McLeod	Y
Representative SuAnn Olson	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Bill Tveit	A
Representative Lori VanWinkle	Y
Representative Christina Wolff	Y

3:26 p.m. Motion passed 11-0-3

3:26 p.m. Representative Olson moved a Do Pass as Amended.

3:27 p.m. Representative Schneider seconded the motion.

<b>Representatives</b>	<b>Vote</b>
Representative Lawrence R. Klemin	Y
Representative Karen Karls	A
Representative Steve Vetter	N
Representative Nels Christianson	N
Representative Donna Henderson	A
Representative Jeff Hoverson	Y
Representative Daniel Johnston	N
Representative Carrie McLeod	Y
Representative SuAnn Olson	Y
Representative Bernie Satrom	N
Representative Mary Schneider	Y
Representative Bill Tveit	A
Representative Lori VanWinkle	Y
Representative Christina Wolff	Y

3:28 p.m. Motion passed 7-4-3

3:28 p.m. Representative Olson will carry the bill.

3:29 p.m. Chairman Klemin closed the hearing.

*Wyatt Armstrong, Committee Clerk*



January 27, 2025

Sixty-ninth  
Legislative Assembly  
of North Dakota

**PROPOSED AMENDMENTS TO**

**HOUSE BILL NO. 1386**

Introduced by

Representatives Christy, Bahl, Berg, Conmy, Grindberg, Hoverson, Mitskog, J. Olson

Senators Boschee, Myrdal, Sickler, Thomas

*AB 1-27-25*  
*1003*

1 A BILL for an Act to amend and reenact sections 12.1-27.2-01 and 12.1-27.2-04.1 of the North  
2 Dakota Century Code, relating to a prohibition on possessing certain computer-generated  
3 images; 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 Code is  
6 amended and reenacted as follows:

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

8 As used in this chapter:

- 9 1. "Computer-generated image" means an image or visual representation created  
10 through the use of artificial intelligence or other computer program.
- 11 2. "Minor" means an individual under eighteen years of age or ~~any visual representation~~  
12 a computer-generated image used, created, adapted, altered, or modified to appear to  
13 depict a minor an individual under eighteen years of age by face, likeness, or other  
14 distinguishing characteristics.
- 15 3. "Obscene sexual performance" means any performance which includes sexual  
16 conduct by a minor in any obscene material or obscene performance, as defined in  
17 section 12.1-27.1-01.
- 18 2.4. "Performance" means any play, motion picture, photograph, dance, or other visual  
19 representation, or any part of a performance.

AB 2013

1     3.5. "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail,  
2             deliver, transfer, transmit, ship, transport, publish, distribute, circulate, disseminate,  
3             present, exhibit, or advertise.

4     4.6. "Sexual conduct" means actual or simulated:

- 5             a. Sexual intercourse;
- 6             b. Sodomy, as defined under section 12.1-27.1-01;
- 7             c. Sexual bestiality;
- 8             d. Masturbation;
- 9             e. Sadomasochistic abuse, as defined under section 12.1-27.1-01;
- 10            f. Lewd exhibition of the buttocks, breasts, or genitals;
- 11            g. Nude or partially denuded human figure, as defined in section 12.1-27.1-03.1, if  
12               depicted for the purpose of the sexual stimulation or the sexual gratification of  
13               any individual who may view such depiction; or
- 14            h. Physical contact with a person's clothed or unclothed genitals, pubic area,  
15               buttocks, or breasts. It is not necessary that the minor know that he or she is  
16               participating in the described conduct, or any aspect of it.

17     5.7. "Sexual performance" means any performance which includes sexual conduct by a  
18             minor.

19     6.8. "Simulated" means the explicit depiction of any of the conduct set forth in subsection 4  
20             which creates the appearance of actual sexual conduct and which exhibits any nude  
21             or partially denuded human figure, as defined in section 12.1-27.1-03.1.

22     **SECTION 2. AMENDMENT.** Section 12.1-27.2-04.1 of the North Dakota Century Code is  
23     amended and reenacted as follows:

24     **12.1-27.2-04.1. Possession of certain materials prohibited.**

25     1. A person is guilty of a class C felony if, knowing of its character and content, that  
26             person knowingly possesses any motion picture, computer-generated image,  
27             photograph, or other visual representation that includes sexual conduct by a minor.

28     2. An individual violating this section is guilty of a class B felony if:

- 29             a. The offense involved twenty or more images;
- 30             b. The offense involved sadistic or masochistic conduct or other depictions of  
31               violence;

*gag 303*

- 1           c. The offense involved sexual bestiality;
- 2           d. The offense involves a prepubescent minor or a minor under twelve years of age;
- 3           or
- 4           e. The individual has previously been convicted of an offense subject to registration
- 5           under section 12.1-32-15.
- 6     ~~3. An individual violating this section is guilty of a class A felony if the offense involved~~
- 7     ~~sexual abuse or visual representation of an infant or toddler.~~
- 8     ~~4. This section does not impose liability on the provider of an interactive computer~~
- 9     ~~service, as defined in 47 U.S.C. 230, or an internet service provider, cloud computer~~
- 10    ~~provider, cybersecurity provider, communication service provider, or information~~
- 11    ~~service or telecommunication service network, as defined in 47 U.S.C. 153, for any~~
- 12    ~~content provided by another person.~~

**REPORT OF STANDING COMMITTEE  
HB 1386**

**Judiciary Committee (Rep. Klemin, Chairman)** recommends **AMENDMENTS** ([25.1064.01003](#)) and when so amended, recommends **DO PASS** (7 YEAS, 4 NAYS, 3 ABSENT AND NOT VOTING). HB 1386 was placed on the Sixth order on the calendar.

**2025 SENATE JUDICIARY**

**HB 1386**

# 2025 SENATE STANDING COMMITTEE MINUTES

## Judiciary Committee Peace Garden Room, State Capitol

HB 1386  
3/26/2025

A BILL for an Act to amend and reenact sections 12.1-27.2-01 and 12.1-27.2-04.1 of the North Dakota Century Code, relating to a prohibition on possessing certain computer-generated images; and to provide a penalty.

2:31 p.m. Chair Larson opened the hearing.

Members present:

Chair Larson, Vice Chairman Paulson, Senators: Castaneda, Cory, Luick, Myrdal, Braunberger.

### Discussion Topics:

- Child sexual abuse materials
- Legal definitions and classifications
- Law enforcement investigations
- Impact on child victims
- AI-generated content

2:32 p.m. Claire Ness, Chief Deputy Attorney General, Attorney General's Office, testified in favor and submitted testimony #44198.

2:50 p.m. Steve Harstad, Chief Agent, ND Bureau of Criminal Identification, testified in favor.

2:58 p.m. Chair Larson introduced proposed amendment provided by Amy Cleary, GA Group representing AT&T and Amazon, and submitted testimony #44222.

3:00 p.m. Greg Kasowski, Children's Advocacy Centers of North Dakota, testified in favor and submitted testimony #44135.

3:05 p.m. Chair Larson closed the hearing.

3:05 p.m. Senator Myrdal moved a Do Pass.

3:06 p.m. Senator Castaneda seconded.

3:07 p.m. Steve Harstad, Chief Agent, ND Bureau of Criminal Identification, testified as neutral and answered committee questions.

3:11 p.m. Claire Ness, Chief Deputy Attorney General, Attorney General's Office, testified as neutral and answered committee questions about proposed amendment.

3:16 p.m. Senator Myrdal withdrew motion.

3:16 p.m. Senator Castaneda withdrew second.

3:18 p.m. Senator Myrdal moved verbal amendment to add what was struck out of the bill back in subsection 4 page 3 - does not include struck out line 6 or 7 which is subsection 3.

3:19 p.m. Senator Paulson seconded.

3:20 p.m. Voice Vote - Motion Passed.

3:20 p.m. Senator Myrdal moved a Do Pass as amended.

3:20 p.m. Senator Castaneda seconded the motion.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Ryan Braunberger	Y
Senator Jose L. Castaneda	Y
Senator Claire Cory	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion Passed 7-0-0.

3:20 p.m. Senator Myrdal will carry the bill.

**Additional written testimony:**

Jacob Thomsen, Policy Analyst, North Dakota Family Alliance Legislative Action, submitted testimony in favor #44178.

3:21 p.m. Chair Larson closed the hearing.

*Kendra McCann, Committee Clerk*



March 26, 2025

CO  
3/26/25  
10F3

Sixty-ninth  
Legislative Assembly  
of North Dakota

**PROPOSED AMENDMENTS TO  
FIRST ENGROSSMENT**

**ENGROSSED HOUSE BILL NO. 1386**

Introduced by

Representatives Christy, Bahl, Berg, Conmy, Grindberg, Hoverson, Mitskog, J. Olson

Senators Boschee, Myrdal, Sickler, Thomas

1 A BILL for an Act to amend and reenact sections 12.1-27.2-01 and 12.1-27.2-04.1 of the North  
2 Dakota Century Code, relating to a prohibition on possessing certain computer-generated  
3 images; 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 Code is  
6 amended and reenacted as follows:

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

8 As used in this chapter:

- 9 1. "Computer-generated image" means an image or visual representation created  
10 through the use of artificial intelligence or other computer program.  
11 2. "Minor" means an individual under eighteen years of age or a computer-generated  
12 image used, created, adapted, altered, or modified to appear to depict an individual  
13 under eighteen years of age by face, likeness, or other distinguishing characteristics.  
14 3. "Obscene sexual performance" means any performance which includes sexual  
15 conduct by a minor in any obscene material or obscene performance, as defined in  
16 section 12.1-27.1-01.  
17 ~~2-4.~~ "Performance" means any play, motion picture, photograph, dance, or other visual  
18 representation, or any part of a performance.



2 of 3

Sixty-ninth  
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1     ~~3.5.~~ "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail,  
2             deliver, transfer, transmit, ship, transport, publish, distribute, circulate, disseminate,  
3             present, exhibit, or advertise.

4     ~~4.6.~~ "Sexual conduct" means actual or simulated:

- 5             a. Sexual intercourse;
- 6             b. Sodomy, as defined under section 12.1-27.1-01;
- 7             c. Sexual bestiality;
- 8             d. Masturbation;
- 9             e. Sadomasochistic abuse, as defined under section 12.1-27.1-01;
- 10            f. Lewd exhibition of the buttocks, breasts, or genitals;
- 11            g. Nude or partially denuded human figure, as defined in section 12.1-27.1-03.1, if  
12               depicted for the purpose of the sexual stimulation or the sexual gratification of  
13               any individual who may view such depiction; or
- 14            h. Physical contact with a person's clothed or unclothed genitals, pubic area,  
15               buttocks, or breasts. It is not necessary that the minor know that he or she is  
16               participating in the described conduct, or any aspect of it.

17     ~~5.7.~~ "Sexual performance" means any performance which includes sexual conduct by a  
18             minor.

19     ~~6.8.~~ "Simulated" means the explicit depiction of any of the conduct set forth in subsection 4  
20             which creates the appearance of actual sexual conduct and which exhibits any nude  
21             or partially denuded human figure, as defined in section 12.1-27.1-03.1.

22     **SECTION 2. AMENDMENT.** Section 12.1-27.2-04.1 of the North Dakota Century Code is  
23     amended and reenacted as follows:

24     **12.1-27.2-04.1. Possession of certain materials prohibited.**

25     1. A person is guilty of a class C felony if, knowing of its character and content, that  
26             person knowingly possesses any motion picture, computer-generated image,  
27             photograph, or other visual representation that includes sexual conduct by a minor.

28     2. An individual violating this section is guilty of a class B felony if:

- 29             a. The offense involved twenty or more images;
- 30             b. The offense involved sadistic or masochistic conduct or other depictions of  
31               violence;

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Legislative Assembly

- 1           c. The offense involved sexual bestiality;  
2           d. The offense involves a prepubescent minor or a minor under twelve years of age;  
3           or  
4           e. The individual has previously been convicted of an offense subject to registration  
5           under section 12.1-32-15.  
6       3. This section does not impose liability on the provider of an interactive computer  
7       service, as defined in 47 U.S.C. 230, or an internet service provider, cloud computer  
8       provider, cybersecurity provider, communication service provider, or information  
9       service or telecommunication service network, as defined in 47 U.S.C. 153, for any  
10       content provided by another person.

**REPORT OF STANDING COMMITTEE  
ENGROSSED HB 1386**

**Judiciary Committee (Sen. Larson, Chairman)** recommends **AMENDMENTS** ([25.1064.03001](#)) and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT OR EXCUSED AND NOT VOTING). HB 1386 was placed on the Sixth order on the calendar. This bill does not affect workforce development.



Senate Judiciary Committee  
 Testimony In Support of House Bill #1386  
 3-26-25

Madame Chair and Members of the Senate Judiciary Committee,

My name is Greg Kasowski, Director of the Children's Advocacy Centers of North Dakota. I am here in support of House Bill 1386.

Our Children's Advocacy Centers work daily with children who have experienced child sexual abuse and other forms of child maltreatment. We see firsthand the devastating impact of these crimes. The emergence of AI-generated child sexually abusive materials (CSAM) represents a terrifying new frontier in child maltreatment.

Traditional CSAM involves the actual abuse of a child. AI-generated CSAM, while not involving a real-time physical act of abuse, is no less harmful. It creates hyper-realistic depictions of children engaged in sexual activity, which perpetuates the sexualization and exploitation of young people.

### **Why AI-Generated CSAM Is Not a "Harmless" Crime**

Some individuals may argue that AI-generated CSAM is harmless because there are no actual, real victims. There are several reasons this is not true.

- **AI-Generative Platforms Train on Actual CSAM:** Research shows that some generative AI platforms have trained their models on known CSAM.<sup>1</sup> The very nature of generative AI means the images must be modeled from existing imagery. In this case, it's an amalgamation of pixels diffused from images of real CSAM to create the AI CSAM.
- **Endorsement of AI-Generated CSAM Perpetuates and Normalizes Child Exploitation:** Allowing any form of CSAM to exist, even CSAM where the victim is not a real living breathing child, risks the perpetuation of child exploitation and the

<sup>1</sup> Stanford University. [Investigation Finds AI Image Generation Models Trained on Child Abuse](#). Stanford University: Cyber Policy Center, 17 Aug. 2023.





normalization of child sexual abuse. Furthermore, it desensitizes our society to the harm of child sexual abuse, which has devastating consequences. Condoning any form of its presence is frightening.

- **AI-Generated CSAM May Lead to Hands-On Child Sexual Abuse:** Although no studies exist as to whether *AI-generated* CSAM consumption leads to hands-on child sexual abuse, studies have shown that a majority of perpetrators of *traditional* CSAM have also conducted hands-on child sexual abuse.<sup>2</sup>
- **Investigators Examining CSAM May Experience Vicarious Trauma:** We must not forget those working on the front lines of these criminal cases. Imagine having to sift through this content day after day, month after month, year after year. Individuals on the Internet Crimes Against Children (ICAC) Taskforce, human service zone professionals, attorneys, and our CAC staff are affected by the proliferation of this content. Allowing any form of this content, even if it doesn't contain a real-life victim, negatively impacts these front-line workers.

In conclusion, House Bill 1386 is a proactive step toward protecting our children and preventing child abuse. I urge the committee to request a DO PASS on House Bill 1386.

Madame Chair and members of the committee, I appreciate your time and consideration of this bill and will try to answer any questions.

Sincerely,

Greg Kasowski  
Executive Director  
Children's Advocacy Centers of North Dakota

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<sup>2</sup> Bourke, M. L., et al. [The Use of Tactical Polygraph with Sex Offenders](#). Journal of Sexual Aggression, vol. 21, no. 3, 2014, pp. 354–67.





**Testimony in Support of House Bill 1386**

Jacob Thomsen, Policy Analyst  
North Dakota Family Alliance Legislative Action  
January 20, 2025

Madam Chair Larson and honorable members of the Senate Judiciary Committee,

North Dakota Family Alliance Legislative Action would like to testify in support of House Bill 1386 and respectfully request that you render a "DO PASS" on this bill.

Our organization believes that human beings are created with inherent dignity and worth. Artificially manufactured sexually explicit images and videos violate a person's dignity and can significantly damage a person's self-worth and image among their peers. This is especially the case with minors.

We support this bill because it seeks to protect the dignity and worth of people and protects against nonconsensual creation and distribution of artificially created sexually explicit images and videos.

For these reasons, North Dakota Family Alliance Legislative Action respectfully requests that you please vote House Bill 1386 out of committee with a "DO PASS" recommendation.

Thank you for the opportunity to provide this testimony, and feel free to contact us if you have any questions.

Sincerely,

Jacob Thomsen  
Policy Analyst  
North Dakota Family Alliance Legislative Action

**ICAC**

- **February CyberTips Received:** 107
- **CyberTips Received thru 3-25-2025:** 410
- **Overall CyberTips received in 2024:** 1557

**Total Incident Types (Year to date)**

Online Enticement of Children for Sexual Acts	107
Child Pornography (possession, manufacture, and distribution)	288
Misleading words or digital Images on the Internet	3
Unsolicited Obscene Material Sent to a Child	7
Child Pornography (Receipt)	1
Child Sex Trafficking	3
Other Online Crime Against Children	1

**Reporting Electronic Service Provider (Year to date)****ESP**

Snapchat	122
Instagram, Inc.	38
Facebook	37
TikTok Inc.	32
MediaLab/Kik	25
Google	25
X Corp	21
Discord Inc.	20
Synchronoss Technologies, Inc	16
Reddit, Inc.	12



SENATE JUDICIARY COMMITTEE  
MARCH 26, 2025

TESTIMONY OF CLAIRE NESS  
OFFICE OF ATTORNEY GENERAL

IN SUPPORT OF  
ENGROSSED HOUSE BILL NO. 1386

Chairman Larson and members of the Committee:

For the record, my name is Claire Ness. I am the Chief Deputy Attorney General, and I appear on behalf of the Attorney General's Office in support of Engrossed House Bill 1386.

I'd like to take a moment to remember Representative Josh Christy and his sponsorship of this legislation. He reached out to me during the interim to ask how he could help address the growing concerns about computer-generated child pornography, and he let me know about his impressive background in technology and software development. We discussed the current state of the law governing this issue, and he worked with our office to prepare the bill that was introduced in the House. Our office appreciates his support and his efforts on this important topic.

**How the Attorney General's Office Actively Combats Child Sexual Abuse Materials**

The Attorney General's Office is actively engaged in the fight against child pornography, or child sexual abuse materials (CSAM) as it is more accurately named. The prosecutors in our Criminal Law Division work with State's Attorneys to prosecute individuals for CSAM-related crimes. The Bureau of Criminal Investigations (BCI) - particularly the agents who are members of the Internet Crimes Against Children (ICAC) unit - conducts most investigations in the state involving CSAM and trains law enforcement investigators around the state to do the same. BCI also receives alerts from the National Center for Missing and Exploited Children (NCMEC) when NCMEC identifies known CSAM on an internet address in North Dakota. This triggers an



investigation - by BCI or another law enforcement agency - into the location of that address, the owner and content of the CSAM, and whether there are any known victims. Our office also has employees to assist the victims of CSAM, and we participate on the Human Trafficking Task Force that works with other victim support entities. We also greatly appreciate our law enforcement colleagues around the state who conduct investigations of CSAM.

### **The Rising Incidence of CSAM in North Dakota**

Making, possessing, and trading CSAM is all too common in our state. While NCMEC tips account for only a subset of the actual CSAM investigations conducted by law enforcement, those tips alone are escalating exponentially. For each of the past two years, BCI received well over 1,500 tips from NCMEC. For comparison, in 2019, the number was 379, and in 2020, the number was 585. Now consider that each tip may lead to a device with many images involving multiple victims. And there are many CSAM investigations that develop from information other than NCMEC tips.

### **Types of Computer-Generated CSAM**

Computer generated images and artificial intelligence have opened a new world for the cruel individuals who make, possess, or trade CSAM. These individuals can use computers to generate images or video of children engaged in any sexual conduct they choose, either out of whole cloth (sometimes called virtual CSAM) or by incorporating images of the heads or other body parts of children, such as young relatives or neighbors, into sexual imagery (sometimes called morphed CSAM).

It has been argued by some that the creation of virtual CSAM does not harm children or society. This is incorrect, especially in today's world where virtual CSAM can be indistinguishable from CSAM produced with minors and likely will fall within the legal

definition of obscenity. CSAM - virtual, morphed, or otherwise - creates more child victims. It contributes to the global demand for more CSAM, which is predominantly made by sexually abusing children, and criminals who possess CSAM also are much more likely than not to "touch offend" (sexually abuse) a child.

### **United States Supreme Court Opinion on Computer-Generated CSAM**

In 2002, the U.S. Supreme Court decided that some virtual CSAM had protection under the First Amendment.<sup>1</sup> Virtual CSAM at the time was made using very early forms of computer-generated imagery that did not look like living people, and much less was known about its impact. That is not the case today, and the Court may reach a different result if faced with the same question now. This is an ongoing discussion among prosecutors and policymakers.

Also, in its 2002 decision regarding virtual CSAM, the Court reaffirmed its earlier holding that "obscenity" is not protected by the First Amendment.<sup>2</sup> So any virtual CSAM that constitutes obscenity is not protected speech, even under the 2002 opinion.

The Court did not rule on the constitutionality of laws prohibiting morphed CSAM. However, the Court's opinion strongly implies that morphed CSAM does not have the same constitutional protections as virtual CSAM. "Although morphed images may fall within the definition of virtual child pornography, they implicate the interests of real children and are in that sense closer to the images in [another case]. Respondents do not challenge this provision, and we do not consider it."

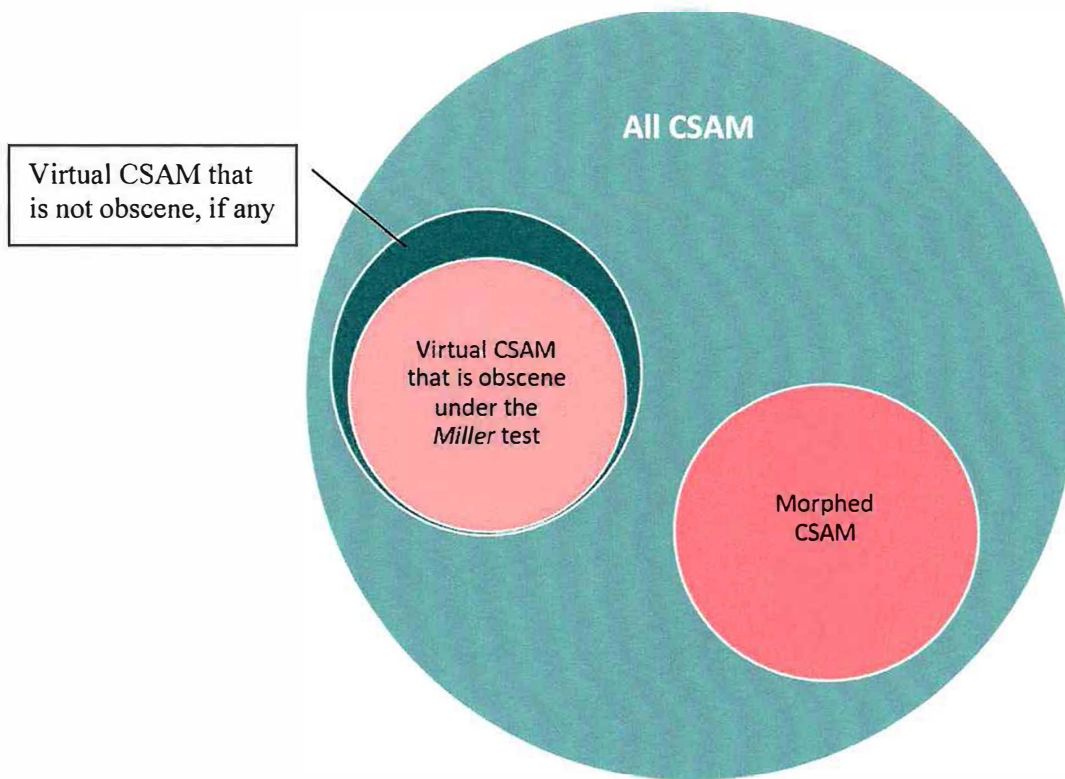
Under the 2002 Ashcroft v. Free Speech Coalition decision then, CSAM can be divided into different categories with different constitutional protections or lack thereof. CSAM, morphed CSAM, and virtual (or other) CSAM that is obscene are not protected under the First

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<sup>1</sup> Ashcroft v. Free Speech Coalition, 535 U.S. 234 (2002).

<sup>2</sup> Id. (to be obscene, "the work, taken as a whole, appeals to the prurient interest, is patently offensive in light of community standards, and lacks serious literary, artistic, political, or scientific value.")(citing Miller v. California, 413 U.S. 15 (1973)).

Amendment. To the extent there is any virtual CSAM that is not obscene, the Supreme Court said in that 2002 case that it would have First Amendment protection. So – if there is any CSAM that fits into the green area in the diagram below – and if the current Supreme Court would come to the same conclusion based on 23 years of technological advances and data – then the sliver of CSAM in that green area would have legal protections under the First Amendment.



### **How House Bill 1386 Will Address CSAM**

House Bill 1386 will (1) ensure prosecutors in North Dakota can charge individuals who make, possess, or trade computer-generated CSAM and (2) enhance penalties for possession of any CSAM involving the most egregious and brutal forms of child abuse, for those possessing significant quantities of CSAM, and for repeat offenders.

Section 1 of the bill adds two definitions to our CSAM definition section to cover computer-generated images of minors, including images of a minor's face or other distinguishing characteristics that have been adapted or modified for use in CSAM.

- First – it defines “computer-generated image” – which is then included in Section 2 of the bill, which prohibits the possession of CSAM.
- Second – it adds a definition of “minor” that includes our current legal definition (an individual under 18 years of age) as well as virtual and morphed images of minors, for purposes of this chapter alone.

Section 2 of the bill adds the defined “computer-generated image” to the list of materials it is unlawful to possess. For example, an image of an actual minor that has been manipulated with a computer to be engaged in a sexually explicit activity with another minor, adult, object, etc. would fall within this definition.

The section of the Century Code amended in Section 2 of the bill already uses the term minor, so it would incorporate the new definition from Section 1 to prohibit virtual and morphed images of minors in CSAM as well.

Section 2 also enhances the penalty for possession of CSAM from a class C felony to a class B felony for possession of particularly heinous forms of CSAM or possession by a registered sex offender. The forms of abuse that trigger this enhanced penalty include sadistic, masochistic, and violent conduct; bestiality; and CSAM involving children under the age of 12. According to the United States Sentencing Commission’s Federal Sentencing of Child Pornography: Non-Production Offenses Report published in June 2021, “over half (52.2%) of the offenders had images or videos of infants or toddlers (22.8% and 29.4%, respectively) and nearly every offender (99.4%) had images or videos depicting victims who were prepubescent or under the age of 13.”

The report also noted that “[t]he enhancements for images depicting sadistic or masochistic conduct or abuse of an infant or toddler (84.0% of cases) ... were also applied in most cases.” Although these are statistics from federal CSAM cases, North Dakota is not immune from these types of crimes.

People sometimes are surprised when members of our office talk about the volume or severity of CSAM in North Dakota. Just as when I testified in the House, I considered bringing a read-out of a video involving CSAM to illustrate for the committee the horrific nature of what happens to these children. I will not read it into the record, but we have one available. The violence the perpetrator displays is unmistakable, and there is no question that it is one of the most inhumane crimes our investigators deal with. I ask this committee not to forget the children who are victims of this crime when you consider this bill and the penalties it will provide.

For these reasons, the Attorney General's Office requests a DO PASS on Engrossed House Bill 1386. Thank you for your time today.

Senator Braunberger,

GA Group represents AT&T and Amazon. As you prepare to hear HB [1386](#) this afternoon, we wanted to ask for the committee's consideration in supporting the addition of some language that was originally included in the bill: the technology liability clause that you also added back onto HB 1351:

***This section does not impose liability on the provider of an interactive computer service, as defined in 47 U.S.C. 230, or an internet service provider, cloud computer provider, cybersecurity provider, communication service provider, or information service or telecommunication service network, as defined in 47 U.S.C. 153, for any content provided by another person.***

Thank you for your consideration to add this as it relates to computer-generated images. Please let me know if you have any questions.

Best,

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