



# North Dakota Legislative Council

Prepared for the Protection and Victim Services Committee  
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## DETRIMENTAL IMPACTS OF PORNOGRAPHY STUDY - BACKGROUND MEMORANDUM

Senate Concurrent Resolution No. 4017 (2025) ([appendix](#)) provides for a study of the detrimental impacts of pornography. This study must analyze the current efforts for education, prevention, and research related to the consequences of pornography, examine potential policy changes, and include input from state agencies and other stakeholders. As introduced, the resolution sought to recognize pornography as a public health hazard, urging education, prevention, research, and policy changes to address pornography. The resolution was subsequently amended to provide for this study.

### BACKGROUND

Pornography generally is defined as the depiction of erotic behavior intended to cause sexual stimulation. Pornography consumption is an addictive behavior associated with a host of negative outcomes across demographics. Over the last decade, the Internet has made pornography increasingly accessible, affordable, and anonymous causing a surge in consumption. In 2019, the cyber security firm Webroot found that 35 percent of all digital downloads were related to pornography.<sup>1</sup> The adult entertainment market was valued at an estimated \$58.8 billion in 2024, and is projected to reach \$74.7 billion by 2030.<sup>2</sup> Revenue for the pornography industry in the United States was \$13 billion in 2023.<sup>3</sup> Pornhub, the world's largest pornography site, has approximately 28.5 billion annual visits and an average of 800 searches each second.<sup>4</sup>

Pornography may be especially detrimental to children and adolescents, with early exposure linked to negative developmental outcomes, a greater acceptance of sexual harassment, sexual activity at younger ages, negative attitudes toward women, and sexual aggression.<sup>5</sup> Adolescents who use pornography are more likely to develop depression and relationship problems, express less commitment to their families, and appear less socially integrated.<sup>6</sup> Research indicates the earlier an adolescent is exposed to pornography, the greater the risk for health and relationship problems.<sup>7</sup>

Pornography also has significant impacts on adults, especially on women and families. Studies show the neural changes associated with pornography addiction are similar to the changes seen in the brains of individuals addicted to alcohol or drugs.<sup>8</sup> Pornography exposure increases the likelihood of verbal and physical aggression toward a partner.<sup>9</sup> Men who consume pornography are more likely to perpetuate sexual assault and believe that women cause or enjoy sexual assault.<sup>10</sup> Pornography also impacts

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<sup>1</sup> *The Impact of Pornography on Children*, American College of Pediatricians.

<sup>2</sup> *Adult Entertainment Global Business Analysis Report 2024-2030*, Yahoo! Finance.

<sup>3</sup> *The Impact of Pornography on Children*, American College of Pediatricians.

<sup>4</sup> *Most Visited Websites in the World: September 2024*, SemRush.

<sup>5</sup> *What Happens When Children are Exposed to Pornography*, Institute for Family Studies.

<sup>6</sup> *Social Bonds and Internet Pornographic Exposure Among Adolescents*, Journal of Adolescence.

<sup>7</sup> *Not My Child: Parenting, Pornography, and Views on Education*, Journal of Family Studies.

<sup>8</sup> *Brain Structure and Connectivity Associated with Pornography Consumption*, Journal of the American Medical Association Psychiatry Journal.

<sup>9</sup> *A Meta-Analysis of Pornography Consumption and Actual Acts of Aggression in General Population Studies*, Journal of Communication.

<sup>10</sup> *The Impact of Internet Pornography on Marriage and the Family: A Review of the Research*, Sexual Addiction and Compulsivity.

healthy relationships, causing distorted views on sexuality and making it more difficult to form meaningful relationships.<sup>11</sup>

### **NORTH DAKOTA LAW**

North Dakota Century Code Chapter 12.1-27.1 addresses obscenity control, criminalizing actions related to the dissemination, performance, and display of obscene materials. Obscene material is defined as content appealing to a prurient interest, under contemporary North Dakota standards, which depicts sexual conduct in a patently offensive way, and lacks serious literary, artistic, political, or scientific value to a reasonable person. It is a Class C felony for an individual to:

- Knowingly disseminate or intentionally produce, send, or transport obscene material for dissemination;
- Present or direct for monetary gain, or participate in an obscene performance;
- Permit an obscene performance in an establishment licensed under Section 5-02-01;
- Recklessly promote to a minor any harmful material or performance;
- Admit a minor to a premises where a performance harmful to minors is exhibited or takes place; or
- Permit a minor to participate in a performance harmful to a minor.<sup>12</sup>

Section 12.1-27.1-03.1 provides it is a Class B misdemeanor for an individual to willfully display at a business, where minor patrons are or may be invited, any photograph, book, pamphlet, or magazine, the exposed cover or available content of which exploits or depicts nude or partially denuded human figures posed or presented in a manner to exploit sex, lust, or perversion for commercial gain. Section 12.1-27.1-03.2 provides it is a Class B misdemeanor for an individual to display an X-rated movie, when the movie can be seen by a minor outside the viewing area.

Section 12.1-27.1-03.3 establishes penalties relating to the dissemination of sexually expressive images. It is a Class A misdemeanor to:

- Create or possess a surreptitiously created sexually expressive image without the consent of the depicted individual;
- Distribute or publish a sexually expressive image with the intent to cause harm or humiliation to the depicted individual; or
- Distribute or publish a sexually expressive image after receiving notice not to publish or distribute the image from the depicted individual or the depicted individual's parent or guardian.

An identifiable individual harmed by a violation of Section 12.1-27.1-03.3 may initiate a civil action and recover economic and noneconomic damages, or statutory damages. The identifiable individual also may recover or be awarded an amount equal to any monetary gain made by the defendant, exemplary damages, reasonable fees, and other remedies available under state law, including injunctive relief.

Section 12.1-27.1-03.4 provides adult-oriented performances may not be conducted on public property or at a business with minor patrons. A person who violates adult-oriented performance restrictions is guilty of a Class A misdemeanor for a first offense and a Class C felony for a second or subsequent offense.

Section 12.1-27.1-03.5 prohibits a public library from maintaining explicit sexual material in the children's collection and requires libraries to develop a review process for the removal or relocation of material and to provide a compliance report.

<sup>11</sup> *Effects of Prolonged Consumption of Pornography on Family Values*, Journal of Family Issues.

<sup>12</sup> NDCC §§ 12.1-27.1-01 and 12.1-27.1-03.

Chapter 12.1-27.2 addresses sexual performances by children, including computer-generated images created through the use of artificial intelligence or other computer programs.

A person is guilty of a Class A felony if the person:

- Knowingly employs, authorizes, or induces a minor to engage in sexual conduct during a performance;
- As a parent or legal guardian, consents to the participation of the minor in sexual conduct during a performance;
- As an adult, portrays himself or herself as a minor, and induces a minor to engage in a sexual performance; or
- Knowingly produces, directs, or promotes an obscene performance containing sexual conduct by a minor.<sup>13</sup>

Section 12.1-27.2-04.1 establishes a penalty for knowingly possessing any visual representation that includes sexual conduct by a minor, known as child pornography. An individual who knowingly possesses child pornography is guilty of a Class C felony. The possession of child pornography is a Class B felony if:

- The offense involves 20 or more visual representations;
- The offense involves depictions of violence or bestiality;
- The offense involves depictions of a prepubescent minor or minor under age 12; or
- The individual has been previously convicted of a registerable offense under Section 12.1-32-15.

Section 12.1-27.2-04.2 establishes enhanced fines for persons, including individuals and private entities, violating the chapter for monetary gain or commercial activity, and escalating fines for a second or subsequent conviction.

Section 12.1-27.2-05 establishes an affirmative defense to a prosecution under the chapter if the defendant reasonably believed the minor was age 18 or older, if the minor was age 15 or older, or if the material was disseminated for an appropriate purpose, including for medical or judicial purposes. If necessary, to determine whether a minor participated in a sexual performance, the trier of fact may base its determination on the personal inspection of the minor, inspection of a visual representation of the sexual performance, testimony by a witness to the sexual performance as to the age of the minor based on the minor's appearance, expert testimony based on the appearance of the minor, or any other method authorized by state law or court rule.<sup>14</sup>

Section 51-07-32 imposes civil liability on commercial entities publishing or distributing sexual material harmful to a minor. Material harmful to a minor is broadly defined to include material that the average individual applying contemporary standards would find to appeal to the prurient interest in a manner patently offensive to the minor, which includes depictions of specific body parts or sexual acts, and taken as a whole, lacks serious literary, artistic, political, or scientific value for a minor.<sup>15</sup> Commercial entities publishing or distributing a substantial portion of sexual material harmful to a minor online must perform reasonable age verification to ensure the individual attempting to access the material is at least age 18. A "substantial portion" means more than 33.33 percent of the material on a website is sexual material harmful to a minor. Section 51-07-32 does not apply to news-gathering organizations and provides immunity from liability for Internet service providers, search engines, cloud service providers, and application stores solely for providing access to a website or other content on the Internet or other system not under the provider's control.

<sup>13</sup> NDCC §§ 12.1-27.2-02 and 12.1-27.2-03.

<sup>14</sup> NDCC § 12.1-27.2-06.

<sup>15</sup> NDCC § 51-07-32(1)(g).

## FEDERAL LAW

### Free Speech Clause of the First Amendment<sup>16</sup>

The Free Speech Clause of the First Amendment to the United States Constitution limits the ability of the government to regulate expression, generally prohibiting the imposition of restrictions that burden expression based upon content or viewpoint. Content or viewpoint restrictions must survive strict scrutiny, requiring the restriction to be narrowly tailored to serve a compelling state interest. Content-neutral restrictions, which apply to expressive activity without regard to content or viewpoint, may survive a First Amendment challenge when advancing an important government interest and when speech is not substantially burdened more than necessary to further the interest.

The United States Supreme Court has held certain categories of "unprotected speech" may be subject to content-based restrictions without the application of strict scrutiny under the First Amendment. Categories of unprotected speech include child pornography<sup>17</sup> and obscenity.<sup>18</sup> The Court established a three-prong test in *Miller v. California*<sup>19</sup> for determining obscenity under the First Amendment. When obscenity is narrowly defined or construed in accordance with the *Miller* test, the Court generally has upheld laws prohibiting the dissemination of obscenity. Under the *Miller* test, material is obscene if:

1. Under contemporary community standards, the average person would find the work, taken as a whole, appeals to the prurient interest;
2. The work depicts or describes, in a patently offensive manner, sexual conduct specifically defined by applicable state law; and
3. The work, taken as a whole, lacks serious literary, artistic, political, or scientific value.<sup>20</sup>

Minors are entitled to First Amendment rights, but material considered obscene to a minor may not be considered obscene in an adult context. States may define obscenity differently for minors if the regulation is narrowly tailored to ensure an adult's First Amendment rights are not infringed. In June 2025, the Supreme Court upheld a Texas state law requiring the implementation of age verification systems on pornography websites to verify minors are not consumers.<sup>21</sup> The Court reasoned that an individual does not have the First Amendment right to access content obscene to minors without submitting proof of age, the Texas law regulates unprotected activity, and the burden to adults is merely incidental.

### Children's Internet Protection Act<sup>22</sup>

The federal Children's Internet Protection Act (CIPA) was enacted in 2000 and implemented in 2001 following the issuance of rules by the Federal Communications Commission. Addressing concerns to children's access to obscene and harmful Internet content, CIPA imposes requirements on libraries and schools receiving federal assistance through the E-Rate program. Designed to help connect students to digital resources, the E-Rate program provides discounted telecommunications and Internet services to eligible K-12 schools and public libraries. To receive funding through the E-Rate program under CIPA, an entity must certify it has an Internet safety policy with technology protection measures in place. Protection measures must block or filter access to materials that are obscene, contain child pornography, or are harmful to minors. Schools also must certify:

- Internet safety policies include monitoring the online activities of minors; and
- Compliance with the federal Protecting Children in the 21<sup>st</sup> Century Act, requiring the provision of education for minors about appropriate online behavior, including appropriate interactions and cyberbullying awareness.

<sup>16</sup> U.S. Const. Amend. I ("Congress shall make no law . . . abridging the freedom of speech" as applied to the states through the Due Process Clause of the Fourteenth Amendment (U.S. Const. Amend. XIV.)).

<sup>17</sup> *New York v. Ferber*, 458 U.S. 747, 764 (1982).

<sup>18</sup> *Roth v. United States*, 354 U.S. 476, 483 (1957).

<sup>19</sup> *Miller v. California*, 413 U.S. 15 (1973).

<sup>20</sup> *Id.* at 24.

<sup>21</sup> *Free Speech Coalition v. Paxton*, 145 S. Ct. 2291 (2025).

<sup>22</sup> Children's Internet Protection Act [Pub. L. 106-554; 114 Stat. 2763].

### **The TAKE IT DOWN Act<sup>23</sup>**

The federal Tools to Address Known Exploitation by Immobilizing Technological Deepfakes on Websites and Networks (TAKE IT DOWN) Act of 2025, criminalizes the nonconsensual publication of intimate images, including digital forgeries. The Act amends the federal Communications Act of 1934 to add new criminal prohibitions on the publication of intimate images and creates new requirements for covered platforms enforced by the Federal Trade Commission.

The criminal prohibitions consist of seven distinct offenses, including publications involving authentic intimate visual depictions, publications involving digital forgeries, and threats involving intimate depictions or digital forgeries. The term "digital forgery" covers intimate digital depictions of an identifiable individual that have been altered through artificial intelligence or other technological means. Publication-related offenses involving an adult require showing that the defendant intended to cause harm or that identifiable harm was caused by the publication, including psychological, reputational, or financial harm. Offenses involving minors have a lower burden of proof and increased maximum penalties.

The Act also includes requirements for a covered platform to establish a process for the removal of an intimate visual depiction after notice the publication lacked the identifiable individual's consent. A covered platform is defined under the Act as a "website, online service, or mobile application" serving the public which primarily provides a forum for user generated content or in the regular course of business publishes, hosts, or makes available content of nonconsensual intimate visual depictions. The Federal Trade Commission regulates notice and removal requirements, which must be implemented by May 19, 2026.

## **RECENT LEGISLATION**

### **2023 Legislation**

Senate Bill No. 2360 was passed by the Legislative Assembly but subsequently vetoed by the Governor. The bill would have amended Section 12.1-27.1-01, changing the standard for obscene material to be judged from an ordinary adult perspective to a reasonable adult perspective. The bill also would have expanded Section 12.1-27.1-03.1, regarding the display of material to minors, to include explicit sexual material at public libraries and public school libraries. Digital or online library database resource providers would have been required to implement protection measures that prohibit and prevent students enrolled in K-12 from exposure to obscene performance or explicit sexual material. The bill would have made it a Class B misdemeanor for an employee of a school district, state agency, or public library to willfully expose explicit sexual material to a minor.

House Bill No. 1205 prohibited a public library from maintaining books that contain explicit sexual material in the library's children's collections. The bill required a public library to develop and implement policies and procedures for reviewing and evaluating its book collections to ensure the library maintains age-appropriate materials in its children's collections. The bill also required public libraries to submit a compliance report to the Legislative Management by May 1, 2024.

House Bill No. 1333 created restrictions on adult-oriented performances, defined as performances intended to appeal to prurient interests and featuring the purposeful exposure of intimate body parts or sexual conduct. The bill makes it a Class A misdemeanor for a first offense, or Class C felony for a second or subsequent offense, for a person to organize an adult-oriented performance on public property or at a business establishment frequented by minors or where minors are or may be invited as a part of the general public.

### **2025 Legislation**

The 2025 Legislative Assembly passed House Bill No. 1561 and Senate Bill No. 2380, creating Section 51-07-32, which imposes civil liability on commercial entities publishing or distributing sexual material harmful to a minor.

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<sup>23</sup> The TAKE IT DOWN Act [Pub. L. 119-12; 139 Stat. 55].

Senate Bill No. 2307 was passed by the Legislative Assembly and subsequently vetoed by the Governor. The bill would have amended Section 12.1-27.1-01, changing the standard for obscene material to be judged from an ordinary adult perspective to a reasonable adult perspective. The bill also would have prohibited school districts from maintaining explicit sexual material in an area easily accessible to minors. School districts also would have been required to develop a policy to review library collections and online library databases to ensure explicit sexual material was not easily accessible to minors and to report compliance to the Legislative Management by May 1, 2026. The bill also established safety policies and technology protection measures for school districts, state agencies, and public libraries, including digital or online library database resources which filter, block, and otherwise prevent a user of the resource from sending or receiving obscene or explicit sexual material. State's attorneys would have been required to enforce the measures and may have prosecuted violations by school districts, public libraries, and state agencies.

## STATE POLICIES ADDRESSING PORNOGRAPHY

### Age Verification Technologies

While federal law makes showing pornography to minors illegal, these laws have not been meaningfully enforced. Twenty-three states have passed laws requiring age verification before accessing pornography websites.<sup>24</sup> While several of the age verification laws have been subject to court challenges on First Amendment grounds, the United States Supreme Court affirmed the constitutionality of Texas's age verification law in *Free Speech Coalition v. Paxton*, providing some insight on how age verification law may be used by states.<sup>25</sup> Most states, including Texas and North Dakota, use a benchmark of one-third of material being sexually explicit to determine whether the platform is subject to age verification requirements. Many of the laws exempt search engines, Internet service providers, and application stores from liability. Critics of age verification laws cite privacy concerns associated with the provision of data required to prove age and free speech concerns. The efficacy of these laws, including North Dakota's, may warrant further analysis.

### Public Health Campaigns

In 2016, Utah passed a resolution<sup>26</sup> declaring pornography a public health issue and 15 other states have since followed suit.<sup>27</sup> Though resolutions generally lack the force of law, the passage of a resolution is a way to bring attention to an issue or express sentiment on public policy. Some public health experts have pushed back on the declaration of pornography as a public health issue, concluding the criteria to declare it a crisis are not met. To qualify as a public health crisis, an event generally must be an acute event requiring an immediate response, be an event expected to imminently lead to death, and overwhelm the capacity of local systems to do the job of maintaining a community's health.<sup>28</sup>

<sup>24</sup> The following states have passed age verification laws related to online pornography access, in order of first to last passed: La. Stat. Ann. § 9:2800.29 (2025); Utah Code Ann. § 78B-3-1001 (2025); Miss. Code Ann. § 11-77 (2025); Va. Code Ann. 8.01-40.5 (2025); Ark. Code Ann. §§ 4-88-1301 to -1305 (2025); Tex. Civ. Prac. & Rem. Code Ann. §§ 129B.001 to -129B.006 (2025); Mont. Code Ann. § 30-14-159 (2025); N.C. Gen. Stat. Ann. § 66-501 (2025); Idaho Code Ann. § 6-3803 (2025); Kan. Stat. Ann. § 50-6,146 (2025); Ky. Rev. Stat. Ann. §§ 436.001 to 436.009 (2025); Neb. Rev. Stat. Ann. §§ 87-1001 to 1005 (2025); Ind. Code Ann. §§ 24-4-23-1 to 17 (2025); Ala. Code §§ 8-19G-2 to 10 (2025); Okla. Stat. Ann. tit. 15, § 791.2 (2025); Fla. Stat. Ann. § 501.1737 (2025); S.C. Code Ann. § 37-1-310 (2025); Tenn. Code Ann. § 39-17-912 (2025); Ga. Code Ann. § 39-5-5 (2025); Wyo. Stat. Ann. §§ 14-3-501 to 504 (2025); S.D. Codified Laws §§ 22-24-69 to 73;(2025); N.D. Cent. Code Ann. § 51-07-32 (2025); and Ariz. Rev. Stat. § 18-701 (2025).

<sup>25</sup> *Free Speech Coalition v. Paxton*, 145 S. Ct. 2291 (2025).

<sup>26</sup> S.C.R 9, U.T. 61<sup>st</sup> Leg. (Utah 2016).

<sup>27</sup> In addition to Utah, the following states have declared pornography a public health issue: AL, AK, AZ, FL, ID, KS, KY, LA, MO, MT, OK, PA, SD, TN, and VA.

<sup>28</sup> *Should Public Health Professionals Consider Pornography a Public Health Crisis?*, American Journal of Public Health.

### **Other Policy Approaches**

When the government seeks to deter a certain behavior, traditional policy actions include education, warning labels, and taxation. Advocates for pornography regulation cite the following potential policy approaches:

- Digital literacy education for students during the provision of comprehensive sexual education, including lessons on the impact of pornography on brain development, relationships, and behavior;
- Warning labels on websites citing the potential consequences of problematic pornography use, like those used for gambling;
- Taxation levies on commercial pornography websites, the revenue of which could be used to support pornography-related addiction services; and
- Addressing underlying causes exacerbating problematic pornography usage including anxiety, depression, and other mental health concerns.

### **STUDY APPROACH**

In conducting the study of the detrimental impacts of pornography, the committee may wish to seek input from law enforcement, mental health providers, the Attorney General's office, the Department of Health and Human Services, and other stakeholders.

ATTACH:1