

2017 HOUSE JUDICIARY

HB 1183

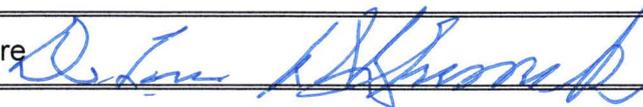
2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1183
1/18/2017
27052

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to indecent exposure toward minors.

Minutes:

1,2,3

Chairman K. Koppelman: Opened the hearing on HB 1183.

Rep. J. Boschee: Introduced the bill (#1) (stopped 2:25)

Representative Vetter: Does that include minor's sending another minor an explicit picture would this qualify.

Rep. J. Boschee: I think that has to do with minors to minors.

Representative Klemin: Are we talking about the term sexting? Is that what we are talking about here?

Rep. J. Boschee: Now we are talking about other means of electronic communication. Sexting would fall under that. Now we are using snap chat and other forms of applications is a third version of electronic means.

Danette Nicholoff, Mother of two girls: (#2) (5:00-9:08) About a year ago my 12-year-old daughter came to me with a disgusting picture on snap chat.

Aaron Birst, Association of Counties: We think this bill does fill a gap that needs to be filled. If anyone under the age of 18 sends images of private parts that is child pornography. This individual didn't send an image of an adult. So we think this fills the void. In this statute it still requires to appear to your sexual gratification so it is not just an off chance photo that you send to somebody that is supposed to be funny.

Representative Klemin: When it disappears in seconds so what do you use for evidence?

Aaron Birst: It would be difficult to prove since it does disappear quickly. It comes down to good shoe work from a detective who gets somebody to confess.

Representative Roers Jones: When it comes up on the phone you can push the camera buttons to take a picture of the screen which will memorialize the picture that you received before it disappears. You said the bill includes the sexual gratification element to be a crime. How do you prove that?

Aaron Birst: It is a jury question. There are a number of prosecutors that would like to see that element removed because it is difficult to prove.

Representative Roers Jones: Are you suggesting would the ND Association of Counties prefer to see that element removed or do you like the element as part of the bill?

Aaron Birst: You do need to make strikers' in the same category as this. If somebody is sending graphic photos to someone else that should be in the realm of sexual registration. But somebody being dumb would not. I do want to bring this back to the members.

Representative Vetter: Would a minor sending another minor consist under this law?

Aaron Birst: I think it is possible. We have had this where high school students are sending pictures of indecent things to others. Technically that could be child pornography which is again a registration ably offense. This bill could offer an alternative. We have spent a lot of time on this topic but you have to be careful you don't write it to broad it becomes unlawful. We do have a sexting statue that plays a roll. We have spent a lot of time for the last three or four sessions on this.

Representative Satrom: According to this a person is guilty of a class C felony if this gets added in. What is the penalties for this?

Aaron Birst: The class c felony is punishable by up to 5 years in jail; a fine of \$5000 or both. That is the lowest.

Chairman K. Koppelman: When Rep. Boschee made me aware of this bill I was surprised for the need for this bill. What has been the struggle for you folks to find statutory language for some of these new waves of technology?

Aaron Birst: I am not versed on the factual scenario in that case. I can get you any specifics on that case from prosecutors who felt s there was a problem with the sexting statue. I think it was because there was an adult sending to someone that was a minor.

Chairman K. Koppelman: Snap chat I do not know much about. How does it work?

Aaron Birst: No there would not be a requirement that it is directed toward anyone so this would be quite broad. If you wanted to send those kind of pictures to someone and it goes to someone else; that could fall into the statue.

Representative Simons: Question in Dickinson we had an incident that became a big deal. The police told him there was nothing he could do about that instance since it is freedom of

speech and he had two small children in his vehicle. What is up with that when we can do it in a public street. This is rampant in our country. What do we do?

Aaron Birst: I agree with you. That is why this committee has struggled for years with this. The US Supreme Court says you don't know pornography, but you will know it when you see it. It is not easy to define.

Representative Roers Jones: Is there an intentional reason where the electronic delivery prohibition only applies to minors where indecent exposure in public would apply to minors and adults alike. Is there is a reason why you selected only minors for the electronic delivery of indecent exposure?

Aaron Birst: I did not draft this bill.

Representative Roers Jones: Would you have a problem expanding this to adults and minors? Do you think that would cause any problems? I would have to think about that.

Representative Roers Jones: I am thinking of unwanted contact?

Aaron Birst: The Sexting might already cover that.

Danette Nicoloff: Snap chat will keep a record of the picture for so many days so it can still be out there and obtainable.

Opposition:

Jackson Lofgren, President of ND Association of Criminal Defense Lawyers: (3) (25:35-28:50)

Chairman K. Koppelman: The amendment being the bill.

Representative Satrom: Is there some way of clarifying that?

Jackson Lofgren: The way the statue reads it just said to a minor. I would have to look at the statue on that.

Representative Satrom: My concern is you have a stranger that 19 sending someone that was 16 and somehow they would get out of it through this loop hole? I am concerned about a loop hole.

Jackson Lofgren: I don't know if we have a way to cover that.

Chairman K. Koppelman: Usually when we have looked at those exceptions it has to do with sexual assault or statues and this is different. I assume some of this harassment can go on among piers. Can you meet with Mr. Birch and see if we can get this together?

Neutral: None

House Judiciary Committee

HB 1183

January 18, 2017

Page 4

Hearing closed.

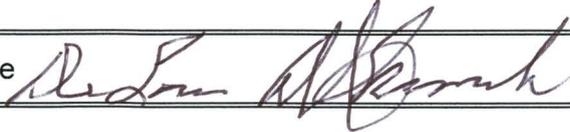
2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1183
1/18/2017 #2
27088

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to indecent exposure toward minors.

Minutes:

Representative Vetter: One of my concerns I have is the minor to minor type of thing and this doesn't really protect the minor.

Representative Paur: The amendment that was brought that was trying to protect girlfriend and boyfriends I did not like either. He mentioned the Romeo and Juliet in the code and I was trying to find it. Instead of putting his amendment, if we could somehow reference that?

Chairman K. Koppelman: I think that is a term that comes from a provision that we usually inserted particularly in laws like sexual assault laws or corruption of a minor. An example is if one person is of age and the other is a minor. This Romeo and Juliet provision does establish a little window of age relationship that is excluded. This is more likely happen to people of the same age. I would guess this is more likely to happen to people of similar ages. The amendment doesn't really fix it.

Representative Roers Jones: Maybe we can add unwanted or unsolicited. If this is a mutual relationship.

Representative Hanson: I agree with that suggestion. If a minor sent a minor a picture, there are other laws on sexting and child pornography and so what this bill would give prosecutors an alternative way to deal with that situation so that those minors involved in that don't get charged with an offense that caused them to go through the mandatory registration of a sex offender.

Representative Vetter: Are you saying this other law takes care of this?

Representative Hanson: It is an alternative that prosecutors can charge the minors who are sending inappropriate pictures to each other so that the minor doesn't have to be charged with an offense that causes them to be a registered sex offender.

Representative Klemin: I think often times prosecutors charge anything they can. This isn't going to prevent them from charging them with this law if it flies.

Representative Magrum: On a misdemeanor they do get one time and they get charged with a Class A misdemeanor they don't have to register as a sex offender then?

Representative Paur: I like Rep. Roers Jones as unsolicited; how to you define that?

Representative Roers Jones: I think the existence of prior evidence. Since we are talking about proposed amendments I am wanting to take out the word minor out.

Chairman K. Koppelman: I am not sure if the prosecutors would want something separate; a different offense so they might want minor in there.

Representative Vetter: One of the witnesses answered that. If you take the minor out of there; you could be having sex with somebody and that is not a crime, but if you send them a lewd picture then it is.

Representative Magrum: This is just technology?

Chairman K. Koppelman: It is using technology in a way and it is predatory perhaps if you are doing this to a minor.

Representative Klemin: The way this is written it is either doing this in a public place or doing it to a minor in a private or public place. Electronic means is not limited to minors. On line 12 & 13 we have two things.

Chairman K. Koppelman: I think you can read that either way. I think that might have been a Legislative Counsel change. On line B it would be indecent exposure; and line C if the intent was to apply to minors in either scenario maybe we should make that clearer.

Representative Klemin: I don't think it should be only applied to minors.

Representative Hanson: I think the concern with applying or by electronic means (mike not on)

Chairman K. Koppelman: I do question removing the language on line 10 and 11. Apparently current law says this is indecent exposure in a public place and it is illegal in a public or private if you do this to a minor. That is better to restate it.

Representative Klemin: Leave lines 10 & 11 language. Line 12 exposes ones' penis or anus by electronic means.

Motion made to amend this bill by Representative Klemin: Seconded by Representative Nelson: Line 10 remove the semicolon after the word place and then remove the overstrike to a minor in a public or private place. Line 11; remove the overstrike or private place. Line 12 remove the words to a minor in a public or private place, or; then after the word by insert the word unsolicited.

Representative Roers Jones: If we have the second sentence that says exposes one's penis, vulva, or anus by electronic means then add unsolicited to clarify it leaves open the ability for someone to send solicited electronics to minors. I want to make sure that is the direction we want to go.

Representative Magrum: If it is solicited and the parent's see it then what?

Representative Roers Jones: We don't want children to be able to solicited or accept these pictures to a minor.

Chairman K. Koppelman: That is to protect the first amendment.

Representative Simons: Is it against the law to show a minor a picture of anything like that? If you look at the back of their window in oil country and there are stickers that are very graphic. If tell my children to shut their eyes. Where do we draw the line? When it is in public view and police officers telling me there is nothing I can do that is not right. If our kids have internet they have excess to anything.

Representative Klemin: We have a whole chapter on obscenities.

Voice vote carried.

Motion to further amend by Rep. Roers Jones on section c on lines 12-14 after the word means on line 13, adding the words or to a minor. Seconded by Representative Satrom

Discussion:

Representative Hanson: If you are looking at an anatomy that is one thing, but if you are

Representative Simons: Where to do we draw the line on this stuff.

Representative Klemin: There are other laws that cover that.

Representative Paur: Does any of this address that 18-year-old with a 17-year-old friend?

Chairman K. Koppelman: No.

Representative Vetter: I cannot accept this.

Chairman K. Koppelman: We don't think it is a forgone conclusion that they would have to register as a sex offender.

Representative Klemin: They were already able to prosecute this offender under the existing law without all those changes in there. I am not sure this is needed anyway.

Representative Magrum: I hate to see these young people get into such trouble at 15 with something like this. Once we get a felony on record it disqualifies these young people for so many things. If they come back and do it again then give them a heavier penalty.

Representative Roers Jones: This bill isn't directed at young people to young people conversations. We are talking about predatory adults sending pictures to minors; not minors making bad decisions. If they do this once it is not a felony. It is when they make the same stupid mistake a second time that we are looking at else.

Representative Vetter: You still are including a minor in this law. That is a part I am having trouble with.

Representative Hanson: This is actually less severe than what is on the books for the first offense. (mike not on)

Chairman K. Koppelman: It actually gets back to prosecutor's discretion and I don't want to hang our hat on that. Prosecutors often charge a much more severe offense so they can get someone who is charged with a crime to plead to something lesser if they are guilty. They save the court some time and they get off with something lighter.

Representative Simons: If two minors do that they are in fact doing making child pornography. If that came across to me I would go to jail so this is a huge deal.

Chairman K. Koppelman: It is important to recognize all courts are not perfect, but we do have elected judges; elected States Attorney's and their job is to prosecute and adjudicate crime. We have to have some trust in that process. Do we give our law enforcement folks a tool to use good judgement on how to use it?

Representative Paur: (mike not on)

Representative Nelson: Reading the law on Section 12.1-20-12.1. So it is already there?

Chairman K. Koppelman: These Sections 12.20.01; are all sex offenses. Reading the statues. There has been a deliberate intent to make a distinction between crimes that are physical in nature versus crimes that involve indecent exposure, pornography etc.

Representative Simons: So it would be already be illegal. Even if you have a picture of someone's parts it is going to be hard to find out if someone's parts. In a court of law this would be hard to prove. How do we go forward with this?

Representative Satrom: If you are sending them that is the key.

Chairman K. Koppelman: Read the proposed amendment.

Voice vote carried.

Motion made to further amendment line 13, by electronic means between the words or and to by Representative Hanson: Seconded by Representative Nelson:

Voice vote carried.

Do Pass as Amended Motion Made by Representative Maragos: Seconded by Representative Roers Jones

Discussion:

Representative Klemin: I don't think this bill was needed. The existing language did accomplish the objective on this. What are we adding here?

Representative Nelson: We are adding adults.

Representative Vetter: All we are really doing is adding an adult. Their intent of what we are doing here I don't think we are doing anything except adding another law.

Representative Klemin: We already have a chapter on obscenity.

Representative Roers Jones: Because it was an electronic exposure means because they were feeling hamstrung by the laws. I think adding the adults makes it more comprehensive so we don't have to deal with this in the future.

Chairman K. Koppelman: It was because of the electronics. Law enforcement did not testify on this.

Roll Call Vote: 9 Yes 3 No 3 Absent Carrier: Representative Roers Jones:

1/18/17 DA

17.0239.01001
Title.02000

Adopted by the Judiciary Committee

January 18, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1183

Page 1, line 2, after "minors" insert "; and to provide a penalty"

Page 1, line 10, remove the underscored semicolon

Page 1, line 10, remove the overstrike over "~~to a minor in a public or~~"

Page 1, line 11, remove the overstrike over "~~private place~~"

Page 1, line 11, after the overstruck period insert "; or"

Page 1, line 12, remove "to a minor in a public or private place, or"

Page 1, line 12, after "by" insert "unsolicited"

Page 1, line 13, after the first "means" insert "or by electronic means to a minor"

Renumber accordingly

2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1183

House Judiciary Committee

Subcommittee

Amendment LC# or Description: Line 10, remove; after the word place then remove the construction to a minor in a petition or private plan

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider

Motion Made By Rep Klemin Seconded By Rep Nelson

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

John Vetter
Carrie

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1183**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: on Section C lines 12-14 after the word
means in line 13, add words in to a minor

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Roers Jones Seconded By Rep. Satrom

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) _____ No _____
 Absent _____
 Floor Assignment : _____

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

*Vote
 Carried*

Date: 1-18-17
Roll Call Vote: 3

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1183

House Judiciary Committee

Subcommittee

Amendment LC# or Description: Amendment 13, by electronic means.

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Hanson Seconded By Rep. Nelson

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Vote carried

2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1183

House Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.0239.01001

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep Maragos Seconded By Rep Roers Jones

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman	✓		Rep. Hanson	✓	
Vice Chairman Karls	✓		Rep. Nelson	✓	
Rep. Blum	✓				
Rep. Johnston	✓				
Rep. Jones	—				
Rep. Klemin		✓			
Rep. Magrum	✓				
Rep. Maragos	✓				
Rep. Paur		✓			
Rep. Roers-Jones	✓				
Rep. Satrom	✓				
Rep. Simons	—				
Rep. Vetter		✓			

Total (Yes) 9 No 3

Absent 3

Floor Assignment : Rep. Roers Jones

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

REPORT OF STANDING COMMITTEE

HB 1183: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 3 NAYS, 3 ABSENT AND NOT VOTING). HB 1183 was placed on the Sixth order on the calendar.

Page 1, line 2, after "minors" insert "; and to provide a penalty"

Page 1, line 10, remove the underscored semicolon

Page 1, line 10, remove the overstrike over "~~to a minor in a public or~~"

Page 1, line 11, remove the overstrike over "~~private place~~"

Page 1, line 11, after the overstruck period insert " or"

Page 1, line 12, remove "to a minor in a public or private place, or"

Page 1, line 12, after "by" insert "unsolicited"

Page 1, line 13, after the first "means" insert "or by electronic means to a minor"

Renumber accordingly

2017 SENATE JUDICIARY

HB 1183

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1183
3/20/2017
29426

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to indecent exposure toward minors; and to provide a penalty.

Minutes: Testimony attached #

1

Chairman Armstrong called the committee to order on HB 1183. All committee members were present.

Joshua Boschee, North Dakota State Representative District 44 (:00 – 2:20), introduced and testified in support of the bill. (see attachment 1)

Senator Myrdal (2:25): “Line 12, you said they added it? Did they add the words ‘by and solicited by electronic means’? Or just by electronic means?”

Representative Boschee: “Those are the explicit words the committee added.”

Senator Myrdal (3:25): “Did they give a reason for that?”

Representative Boschee: “I think part of that was the understanding that people in different relationships share things, and whether or not it was explicit, the unsolicited would cover the folks who did not request those photos.”

Senator Myrdal: “My concern is that it’s a minor.”

Chairman Armstrong (4:00): “The issue you run into is that most minors get those pics from other minors.”

Senator Myrdal (4:25): “If we are putting it in code, it’s concerning to me that the House put unsolicited in there so maybe I’m still missing the point. So if it’s minor to minor, I get that, we live in that world of texting. But by putting that in, it seems to me we are saying if it’s solicited by a minor from an adult the opposite is true. I love the intent of the bill and absolutely support it, I just want to make sure we do it right and protect our minors.”

Representative Boschee: "Their concern with unsolicited was more among adult to an adult."

Chairman Armstrong: "There is another issue that is related to this that has worked its way through the court system while we have been in session. So Aaron Birst may be bringing an Amendment to tack on to this bill."

Danette Nicoloff, North Dakota citizen (6:00 – 9:10), testified in support of the bill. No written testimony.

Nicole told a story of how her daughter received a nude picture of a random guy and how she found out that it would be nearly impossible to prosecute the guy. They found out that the guy did this to 500 minors and was charged with only 9 of those instances. There were also 62 girls who were minors that didn't come forward.

"I want to keep our kids safe and that's why I'm here."

Chairman Armstrong closed the hearing on HB 1183.

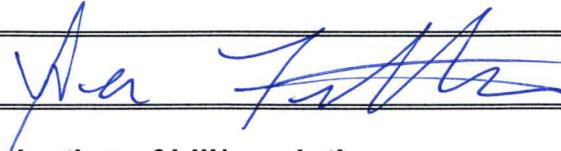
2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1183 Committee Work
3/20/2017
29429

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to indecent exposure toward minors; and to provide a penalty.

Minutes:

Attachments

1

Chairman Armstrong began the discussion on HB 1193. All committee members were present.

Chairman Armstrong briefly went over the bill to the students in the audience.

The Committee reviewed the Amendment. (see attachment 1)

Senator Luick motioned to Adopt the Amendment. **Senator Larson** seconded.

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0.
The motion carried.

Chairman Armstrong: "We will call the committee on 1183 back to order and I will explain what I did to this amendment. Part of the problem is, and Senator Myrdal picked up on this, is the way it is worded right now it's a compound sentence dealing with two distinct separate legal issues. One is with these pictures as they rely to a minor and one is with these pictures as they rely to an adult. There's a different, what we call mens rea, involved in that, and what I mean by that is you can send dirty pictures to another adult and that is completely legal. You can't do it to a minor even if they want them. There's no typical consent. There is a big distinction in the law and so we broke it out and made it so subsection C is adults and subsection D is minors. The difference is unsolicited versus any electronic means. We will put a note on this to Legislative Council to tell us the best place to put the definition in. For now, we're putting it in here so it's defined and the answer is, is that it's really a code-cleanup question for them to answer. I forgot to add electronic means in subsection C so that will go in there as well."

Senator Myrdal motioned to Adopt the Amendment. **Senator Luick** seconded.

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0.

The motion carried.

Senator Luick motioned for Do Pass as Amended. **Senator Myrdal** seconded.

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0.
The motion carried.

Senator Luick carried the bill.

Chairman Armstrong ended the discussion on HB 1183.

PROPOSED AMENDMENTS TO HOUSE BILL 1183

Page 1, after line 24, insert the following:

“SECTION 2. AMENDMENT. Subsection 2 of section 12.1-20-12.2 of the North Dakota Century Code is amended and reenacted as follows:

2. A person is guilty of a class C felony if the person violates subsection 1 after a previous conviction for violating subsection 1, after a previous conviction for violating section 12.1-20-12.1, ~~or~~ after being required to register under section 12.1-32-15, or if the victim is a minor.

SECTION 3. AMENDMENT. Subsection 4 of section 12.1-27.2-01 of the North Dakota Century Code is amended and reenacted as follows:

4. “Sexual conduct” means actual or simulated:
 - a. sexual intercourse;~~;~~
 - b. sodomy, as defined under section 12.1-27.1-01;~~;~~
 - c. sexual bestiality;~~;~~
 - d. masturbation;~~;~~
 - e. sadomasochistic abuse, as defined under section 12.1-27.1-01; ~~or~~
 - f. lewd exhibition of the buttocks, breasts, or genitals;~~;~~
 - g. nude or partially denuded human figure, as defined in section 12.1-27.1-03.1, if depicted for the purpose of the sexual stimulation or the sexual gratification of any individual who may view such depiction; or
 - h. physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or breasts, including the further definitions of sodomy and sadomasochistic abuse under section 12.1-27.1-01.

It is not necessary that the minor know that he or she is participating in the described conduct, or any aspect of it.”

Re-number accordingly

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1183

Page 1, line 1, after "12.1-20-12.1" insert ", subsection 2 of section 12.1-20-12.2, and subsection 4 of section 12.1-27.2-01"

Page 1, line 2, after "minors" insert ", surreptitious intrusion, and sexual performances by children"

Page 1, line 11, remove "or"

Page 1, line 12, remove "or by"

Page 1, replace lines 13 through 15 with "; or

- d. Exposes one's penis, vulva, or anus by any electronic means to a minor.

Page 1, after line 24, insert:

- "5. As used in this section, "electronic means" includes images and picture transmitted via electronic mail, electronic messaging, or from an electronic communications device.

SECTION 2. AMENDMENT. Subsection 2 of section 12.1-20-12.2 of the North Dakota Century Code is amended and reenacted as follows:

- 2. A person is guilty of a class C felony if the person violates subsection 1 after a previous conviction for violating subsection 1, after a previous conviction for violating section 12.1-20-12.1, ~~or~~ after being required to register under section 12.1-32-15, or if the victim is a minor.

SECTION 3. AMENDMENT. Subsection 4 of section 12.1-27.2-01 of the North Dakota Century Code is amended and reenacted as follows:

- 4. "~~Sexual conduct" means actual or simulated sexual intercourse, sodomy, sexual bestiality, masturbation, sadomasochistic abuse, or lewd exhibition of the buttocks, breasts, or genitals, including the further definitions of sodomy and sadomasochistic abuse under section 12.1-27.1-01.;~~
 - a. Sexual intercourse;
 - b. Sodomy, as defined under section 12.1-27.1-01;
 - c. Sexual bestiality;
 - d. Masturbation;
 - e. Sadomasochistic abuse, as defined under section 12.1-27.1-01;
 - f. Lewd exhibition of the buttocks, breasts, or genitals;
 - g. Nude or partially denuded human figure, as defined in section 12.1-27.1-03.1, if depicted for the purpose of the sexual stimulation or

CJ
3/20/2013
2/2

the sexual gratification of any individual who may view such depiction; or

- h. Physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or breasts. It is not necessary that the minor know that he or she is participating in the described conduct, or any aspect of it."

Renumber accordingly

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1183**

Senate Judiciary _____ Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Senator Luick _____ Seconded By Senator Larson _____

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Nelson	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 6 _____ No 0 _____

Absent 0 _____

Floor Assignment _____

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

The amendment describes how a person is guilty of a Class C Felony if they violate subsection 1, after a previous conviction for violating subsection 1. It also defines actual or simulated means of sexual conduct.

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1183**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.0239.02001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Senator Myrdal Seconded By Senator Luick

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Nelson	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1183**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.0239.02001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Senator Luick Seconded By Senator Myrdal

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Nelson	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Luick

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

REPORT OF STANDING COMMITTEE

HB 1183, as engrossed: Judiciary Committee (Sen. Armstrong, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1183 was placed on the Sixth order on the calendar.

Page 1, line 1, after "12.1-20-12.1" insert ", subsection 2 of section 12.1-20-12.2, and subsection 4 of section 12.1-27.2-01"

Page 1, line 2, after "minors" insert ", surreptitious intrusion, and sexual performances by children"

Page 1, line 11, remove "or"

Page 1, line 12, remove "or by"

Page 1, replace lines 13 through 15 with "; or

d. Exposes one's penis, vulva, or anus by any electronic means to a minor.

Page 1, after line 24, insert:

"5. As used in this section, "electronic means" includes images and picture transmitted via electronic mail, electronic messaging, or from an electronic communications device.

SECTION 2. AMENDMENT. Subsection 2 of section 12.1-20-12.2 of the North Dakota Century Code is amended and reenacted as follows:

2. A person is guilty of a class C felony if the person violates subsection 1 after a previous conviction for violating subsection 1, after a previous conviction for violating section 12.1-20-12.1, ~~or~~ after being required to register under section 12.1-32-15, or if the victim is a minor.

SECTION 3. AMENDMENT. Subsection 4 of section 12.1-27.2-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "~~Sexual conduct" means actual or simulated sexual intercourse, sodomy, sexual bestiality, masturbation, sadomasochistic abuse, or lewd exhibition of the buttocks, breasts, or genitals, including the further definitions of sodomy and sadomasochistic abuse under section 12.1-27.1-01;~~

a. Sexual intercourse;

b. Sodomy, as defined under section 12.1-27.1-01;

c. Sexual bestiality;

d. Masturbation;

e. Sadomasochistic abuse, as defined under section 12.1-27.1-01;

f. Lewd exhibition of the buttocks, breasts, or genitals;

g. Nude or partially denuded human figure, as defined in section 12.1-27.1-03.1, if depicted for the purpose of the sexual stimulation or the sexual gratification of any individual who may view such depiction; or

- h. Physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or breasts. It is not necessary that the minor know that he or she is participating in the described conduct, or any aspect of it."

Renumber accordingly

2017 TESTIMONY

HB 1183



North Dakota
House of
Representatives

State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0360

Representative
Joshua A. Boschee
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517 First Street North
Fargo, ND 58102-4540

701-367-3513
jboschee@nd.gov

Committees:
Industry, Business and Labor
Agriculture

#1
1183
1-18-17

January 18, 2017

Good Morning Chairman Koppelman and members of the House Judiciary Committee.

I am Josh Boschee, Representative from District 44 and have introduced HB 1183 at the request of Danette Nicoloff, a parent from my district.

In December 2015, a man sent images of his genitals to several hundred people, unsolicited through SnapChat, an electronic app used to share photos. Nine children 16 or younger received this image, including several female students at Ben Franklin Jr. High in north Fargo. I will let Ms. Nicoloff share with the committee how things progressed once the images were received by her daughter.

Ms. Nicoloff contacted me this past summer when she learned that law enforcement and state's attorney were having to find a "work around" to charge and convict the individual who sent the images. As you all know, technology moves quicker than the laws on the books, so sometimes the law is not explicit in providing tools to law enforcement and attorneys. Ms. Nicoloff and I met with Cass County Sheriff Laney and his office's law enforcement expert in crimes against children to identify a solution, in the event something like this occurs in the future. I then met with attorneys in the Cass County State's Attorney's office for their insight on a solution.

The bill before you is the result of those conversations. By explicitly including "by electronic means", it is our hope, along with the State's Attorney's that law enforcement and prosecutors have the tools available to continue to address crimes against children through electronic means.

I will try to answer questions from the Committee and if there are none, I would like to invite Danette Nicoloff up to share more information with the Committee.

Thank you Mr. Chairman and members of the Committee.

#2
1183
1-18-17

Hello Ladies and Gentlemen. Thank you for the opportunity to speak before you. My name is Danette Nicoloff. I am the mother of two girls ages 10 and 13. I would like to think that I am internet savvy and keep a close eye on my kid's social media use. I would also like to think my girls can tell me anything. I tell them I can't help you if I don't know. I do my very best to keep them safe.

But if you have kids you know that you can't save them from everything no matter how hard we try. However, there are things we can do to keep them safe and that is why I am here today.

About a year ago my daughter, who was 12 at the time, came to me with her phone and said that she received a disgusting picture on her Snap Chat. For those of you who don't know...Snap Chat is a phone app that allows people to communicate through text and pictures. But what sets this app apart from other social media apps is that the picture goes away in a few seconds. The only way to keep the picture is if you are fast enough to get a screen shot. When my daughter looked at her Snap Chat that morning she saw a message and picture from a person named [redacted]. She thought it was her friend from her science class. Well, it wasn't. It was from an adult stranger who sent her a picture of his genitals. She was horrified and told me her stomach hurt. I asked her why he was "following her" on Snapchat and she said he wasn't. I learned that day anyone can access a child's snapchat if the settings aren't on private. My daughter thought her settings were private as they had in the past. She immediately changed the settings and that was a band aide on the problem for the short term. I told her I would call the resource officer at school to let him know what happened and to see if there is anything we could do about the situation.

When I called the officer I knew it was unlikely that much would come of this because my daughter didn't have the picture anymore. So that would have made it a he said she said case. But what I found out in my conversation with the officer is that even if she had the picture...it's not so easy to prosecute. The reason is, it isn't necessarily illegal to send an obscene picture to [redacted] nor if the sender does not know the person receiving the picture is a minor. Now if this guy showed up at my house and dropped his pants in front of my minor daughter he would be arrested on the spot and most likely charged. Simply put, the laws are not keeping up with

#2
1183
1-28-17

technology. I does not make sense that he can't expose himself in person but can send a picture and not have the same consequences.

Thankfully in this case this pervert was about as dumb as they come. I used his snapchat user name to find out what his full name is, his age and what city he lives in. He was really easy to find. Probably even easier than to find my daughter on the internet. I sent the information to missing and exploited children. I figured if what he did to my daughter was not prosecutable I at least wanted him to be on someone's radar. I was confident he would do this again.

It wasn't long after I sent my email to missing and exploited children that I found out this person sent the same picture to several girls in my daughter's grade and several at the high school. At the end of the investigation it was determined that he sent the picture to over 500 girls...most of whom are minors. He even confessed to police. So James Burden of Grand Forks recently plead guilty to one of promoting obscenity to a minor.

But if he had only sent the picture to a couple of girls and had he kept his mouth shut...he most likely not have been charged. This needs to change.

Thank you.

House Judiciary Committee
Hearing on House Bill 1183
January 18, 2018

#3
1183
1-18-17
AM

Mr. Chairman and Members of the House Judiciary Committee,

My name is Jackson Lofgren and I am the President of the North Dakota Association of Criminal Defense Lawyers. Our membership is comprised of lawyers throughout the State of North Dakota who devote some or all of their law practice to the representation of criminal defendants.

House Bill 1183 would amend our Indecent Exposure statute, N.D.C.C. §12.1-20-12.1, to prohibit the exposure of one's penis, vulva, or anus to a minor by electronic means. A conviction for Indecent Exposure is a big deal. It requires registration as a sexual offender under N.D.C.C. §12.1-32-15 for a minimum of fifteen years. I am concerned with the amendment to the extent our Indecent Exposure statute uses the term "person" rather than "adult" and is not one of the sex offenses currently covered by our "Romeo and Juliet" exception found in N.D.C.C. §12.1-20-01.

Therefore, if the amendment is passed in its current form a minor or teenager over the age of eighteen could commit the offense by consensually sending an intimate image through electronic means to a person of the same or similar age. This is often referred to as "sexting" and is more common than most of us would think.¹

As such, I would recommend that HB 1183 be amended so that the proposed change to N.D.C.C. §12.1-20-12.1(c) reads:

c. Exposes one's penis, vulva, or anus to a minor in a private place or by electronic means if the person is at least three years older than the minor. Electronic means include images and pictures transmitted via electronic mail, electronic messaging, or from an electronic communications.

Thank You,

Jackson Lofgren
NDACDL President
Lobbyist ID 363

¹ <http://www.cnn.com/2014/11/18/living/teens-sexting-what-parents-can-do/>

↓

3/20/17

①

HB 1183

March 20, 2017



North Dakota House of Representatives

State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0360

Representative
Joshua A. Boschee
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517 First Street North
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Committees:
Industry, Business and Labor
Agriculture

Good Morning Chairman Koppelman and members of the House Judiciary Committee.

I am Joshua Boschee, Representative from District 44 and have introduced HB 1183 at the request of Danette Nicoloff, a parent from my district.

In December 2015, a man sent images of his genitals to several hundred people, unsolicited through SnapChat, an electronic app used to share photos. Nine children 16 or younger received this image, including several female students at Ben Franklin Jr. High in north Fargo. I will let Ms. Nicoloff share with the committee how things progressed once the images were received by her daughter.

Ms. Nicoloff contacted me this past summer when she learned that law enforcement and state's attorney were having to find a "work around" to charge and convict the individual who sent the images. As you all know, technology moves quicker than the laws on the books, so sometimes the law is not explicit in providing tools to law enforcement and attorneys. Ms. Nicoloff and I met with Cass County Sheriff Laney and his office's law enforcement expert in crimes against children to identify a solution, in the event something like this occurs in the future. I then met with attorneys in the Cass County State's Attorney's office for their insight on a solution.

The bill before you is the result of those conversations. By explicitly including "by electronic means", it is our hope, along with the State's Attorney's that law enforcement and prosecutors have the tools available to continue to address crimes against children through electronic means.

The House Judiciary added the language on line 12 of the engrossed House bill before you to further amend the statute.

I will try to answer questions from the Committee and if there are none, I would like to invite Danette Nicoloff up to share more information with the Committee.

Thank you Mr. Chairman and members of the Committee.

Introduced by

Representatives Boschee, Hanson, K. Koppelman, Maragos, M. Nelson, Roers Jones
Senators Armstrong, D. Larson, Nelson, Piepkorn

1 A BILL for an Act to amend and reenact section 12.1-20-12.1 of the North Dakota Century
2 Code, relating to indecent exposure toward minors.

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

4 **SECTION 1. AMENDMENT.** Section 12.1-20-12.1 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **12.1-20-12.1. Indecent exposure.**

7 1. A person, with intent to arouse, appeal to, or gratify that person's lust, passions, or
8 sexual desires, is guilty of a class A misdemeanor if that person:

9 a. Masturbates in a public place or in the presence of a minor; or

10 b. Exposes one's penis, vulva, or anus in a public place; ~~or to a minor in a public or~~
11 ~~private place.~~

12 c. Exposes one's penis, vulva, or anus to a minor in a public or private place, or by
13 electronic means. Electronic means include images and pictures transmitted via
14 electronic mail, electronic messaging, or from an electronic communications
15 device.

16 2. A person is guilty of a class C felony if the person violates subsection 1 after a
17 previous conviction for violating subsection 1, after a previous conviction for violating
18 section 12.1-20-12.2, or after being required to register under section 12.1-32-15.

19 3. A person who commits a violation of subdivision a or b of subsection 1 within fifty feet
20 [15.24 meters] of or on the real property comprising a public or nonpublic elementary,
21 middle, or high school is guilty of a class C felony. A person who commits a violation of
22 subsection 2 within fifty feet [15.24 meters] of or on the real property comprising a
23 public or nonpublic elementary, middle, or high school is guilty of a class B felony.

24 4. The act of a woman discreetly breastfeeding her child is not a violation of this section.

PROPOSED AMENDMENTS TO HOUSE BILL 1183

Page 1, after line 24, insert the following:

SECTION 2. AMENDMENT. Subsection 2 of section 12.1-20-12.2 of the North Dakota Century Code is amended and reenacted as follows:

- 2. A person is guilty of a class C felony if the person violates subsection 1 after a previous conviction for violating subsection 1, after a previous conviction for violating section 12.1-20-12.1, ~~or~~ after being required to register under section 12.1-32-15, or if the victim is a minor.

SECTION 3. AMENDMENT. Subsection 4 of section 12.1-27.2-01 of the North Dakota Century Code is amended and reenacted as follows:

- 4. "Sexual conduct" means actual or simulated:
 - a. sexual intercourse;~~;~~
 - b. sodomy, as defined under section 12.1-27.1-01;
 - c. sexual bestiality;~~;~~
 - d. masturbation;~~;~~
 - e. sadomasochistic abuse, as defined under section 12.1-27.1-01; ~~or~~
 - f. lewd exhibition of the buttocks, breasts, or genitals;~~;~~
 - g. nude or partially denuded human figure, as defined in section 12.1-27.1-03.1, if depicted for the purpose of the sexual stimulation or the sexual gratification of any individual who may view such depiction; or
 - h. physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or breasts, including the further definitions of sodomy and sadomasochistic abuse under section 12.1-27.1-01.

It is not necessary that the minor know that he or she is participating in the described conduct, or any aspect of it."

Re-number accordingly