

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2248

2007 SENATE JUDICIARY

SB 2248

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2248

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 24, 2007

Recorder Job Number: 1798

Committee Clerk Signature

Maria L. Lollberg

Minutes: Relating to persons liable for prosecution in this state and the venue of certain offenses.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of Bill:

Sen. Hacker, Dist. #42, Introduced the bill giving a brief description of bill.

Wayne Stenehjem, Attorney General ND (meter 1:59) Introduced the bill. Att. #1

Spoke of the wonders of the internet. Sited a personal experience with his son Iraq and how they converse on the internet, in real time.

There is the dark side of the internet. The days of luring children from the playground and the shopping centers, where we could see them, are no more. The gathering of children is now done on the internet. Sexual predators are taking advantage of the anonymity of the internet.

It is happening at a large rate in ND. Spoke of the Date Line Program on T.V. We are now

setting up a task force to also do this "trap" in ND. Referred to the "screen show" shown in

committee, of an actual computer conversation of old men trying to meet little girls/boys. This

bill also includes language for out of state predators and "cross county jurisdictional" cases.

The amendment includes other electronic device i.e., palm pilots and cell phones. Also

reviewed was the minimum mandatory sentence Att. #2. It is important to send a message to our children of the predators out there. We also need to send a message to the predator that if before bill. We have two forensic computer scientists in ND working for the BCI crime lab on computers. Their work has become overwhelming.

Sen. Fiebiger, questioned, page 1, line 8 (meter 9:58) Do you anticipate any jurisdictional issues from other states trying to get people back to ND to prosecute? No it is doable, if it is a felony under Federal regulations we can expedite.

Tim Erickson, Computer Forensic examiner. Dept of BCI (meter 11:03) Unit began in 2000. The biggest change is the size of computers, the complexity of the computer and the availability of computers. Discussed the out of state predator. Spoke of work load being 15-20 computer back load at one time.

Steve Harstad, Special Expert Forensic Examiner, Dept of BCI (meter 15:02) Luring people are very aggressive. All you need is someone with the name "sally13". Spoke of why he is in the field and how important it is to be proactive. Spoke of his training and the training of others. We can cross load with other department if we follow similar protocol. Discussed case load that this bill will put us. Spoke of "Peer to Peer" sharing, the active sharing of child pornography.

Sen. Fiebiger asked how many situations are parents/adults report? Most are the parents due to us not having an active roll in this. I have three current cases. Discussion of case load (20:34)

John Byers, Asst Attorney General ND (meter 21:08) Reviewed chart of the changing penalties – Att. # 2 and referred to amendment Att. #3 reviewed amendment on the changes and offered another amendment.

Sen. Fiebiger asked how they derived of the one year sentence in Att. #3. The language is in the existing law.

Ryan Bernstien, Legal Council for the Governor (meter 28:36) Gave testimony – Att. #4.

Additional information provided to the committee Att. #5 "Chat Lingo"

Testimony in Opposition of the Bill:

None

Testimony Neutral to the Bill:

None

Senator David Nething, Chairman closed the hearing.

Senator David Nething, Chairman reopened the hearing.

Discussion of the amendments and the need to increase the A.G.'s staff.

Sen. Nelson made the motion to Do Pass Amendment provided by the Attorney General's office – Att. #3 **Sen. Olafson** seconded the motion. All members were in favor and motion passes.

Sen. Nelson made the motion to Do Pass Amendment provided by the Attorney General's office – Att. #3 **Sen. Olafson** seconded the motion. All members were in favor and motion passes.

Senator David Nething, Chairman closed the hearing.

REPORT OF STANDING COMMITTEE

SB 2248: Judiciary Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2248 was placed on the Sixth order on the calendar.

Page 1, line 1, after "sections" insert "12.1-20-05.1," and after "29-03-01.1" insert a comma

Page 1, line 2, after "to" insert "the luring of a minor by electronic means," and after "state" insert a comma

Page 1, line 3, after "offenses" insert "; and to provide a penalty"

Page 1, after line 4, insert:

"SECTION 1. AMENDMENT. Section 12.1-20-05.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-20-05.1. Luring minors by computer or other electronic means. An adult is guilty of luring minors by computer or other electronic means when:

1. The adult knows the character and content of a communication that, in whole or in part, implicitly or explicitly discusses or depicts actual or simulated nudity, sexual acts, sexual contact, sadomasochistic abuse, or other sexual performances and uses any computer communication system or other electronic means that allows the input, output, examination, or transfer of ~~computer~~ data or ~~computer~~ programs from one computer or electronic device to another to initiate or engage in such communication with a person the adult believes to be a minor; and
2. By means of that communication the adult importunes, invites, or induces a person the adult believes to be a minor to engage in sexual acts or to have sexual contact with the adult, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for the adult's benefit, satisfaction, lust, passions, or sexual desires.
3. A violation of this section is a class A misdemeanor, ~~but~~ if the adult is less than twenty-two years of age and reasonably believes the minor is age fifteen to seventeen. If the adult is less than twenty-two years of age and reasonably believes the minor is under age fifteen, or the adult is twenty-two years of age or older ~~or~~ and the adult reasonably believes the minor is under the age of fifteen to seventeen, violation of this section is a class C felony. If the adult is twenty-two years of age or older and the adult reasonably believes the minor is under the age of fifteen, violation of this section is a class B felony. The court shall sentence an adult convicted of a class B or class C felony under this section to serve a term of imprisonment of at least one year, except the court may sentence an individual to less than one year if the individual did not take a substantial step toward meeting with the minor."

Page 1, replace lines 19 through 24 with:

"29-03-09. Venue of kidnapping, forcible restraint, unlawful imprisonment, electronic luring, or prostitution cases. The venue of a criminal action for any of the following offenses is in any county in which the offense is committed, or into or out of which the individual upon whom the offense was committed may have been brought, in the course of the commission of the offense, or in which an act was done by the

accused in instigating, procuring, promoting, soliciting, or facilitating the commission of the offense:

1. ~~For kidnapping~~ Kidnapping, forcible restraint, or unlawful imprisonment, in violation of chapter 12.1-18;~~or~~
2. ~~For~~ A violation of section 12.1-29-01, 12.1-29-02, or 12.1-29-03 relating to prostitution;

~~is in any county in which the offense is committed, or into or out of which the person upon whom the offense was committed may have been brought, in the course of the commission of the offense, or in which an act was done by the accused in instigating, procuring, promoting, soliciting, or facilitating the commission of the offense; or~~

3. Luring a minor by computer or other electronic means in violation of section 12.1-20-05.1."

Page 2, remove lines 1 through 6

Renumber accordingly

2007 HOUSE JUDICIARY

SB 2248

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2248

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/28/07

Recorder Job Number: 4050

Committee Clerk Signature

A. Penrose

Minutes:

Chairman DeKrey: We will open the hearing on SB 2248.

Sen. Nick Hacker: Sponsor, explained the bill, it is about luring of a minor.

Rep. Meyer: On page 1, line 22, why does it say 22 years of age and not 21.

Rep. Delmore: I got together with the AG, part of that is we have a problem in age when we look at high school and college students who may have a relationship, we've done that with a lot of bills, and they wanted a separation of age.

Wayne Stenehjem, Attorney General: (see attached testimony, 1, 2, 3 and amendment).

This is what they do on Dateline. Our young people in ND are visiting these chat rooms all the time. The new playground is the chat rooms that we see all over America. I wish I could say that this is a problem going on NYC and California, but it is going on right here in ND, big and little towns. What we've done in our office, is to set up a program called the Internet Crimes Against Children program; a sting operation similar to that on Dateline. We are going to be implementing here in ND, for the purpose of catching folks who are chatting with our young people just like this here in the state of ND. The bill will do a couple of things. First of all, it makes it clear that the jurisdiction over a predator who solicits a child in ND, even if the adult is located in another state when the solicitation is made, the case will be where the child is

located. We want to send the message that we treat this very seriously. This bill proposes that, everyone who is over the age of 22 soliciting someone under the age of 15, there will be a minimum mandatory sentence of one year. Part of the reason for that is that it is important to note that the federal minimum mandatory is five years in prison and there is no parole in the federal system. Frequently, when we see an egregious case like this, we will ask the US Attorney's Office to take it, so that we can get the kind of sentence that I think is warranted in these cases. Too often, we're seeing cases in ND where judges don't understand, I'm afraid, that these are serious offenses. What will happen, if the plan goes as the predator expects, to have sex, there will be a rape. I think the offense should be treated accordingly. That is the reason for the minimum mandatory sentence that we're proposing in the bill. I am also suggesting by the amendment, that you consider adding an emergency clause. Steve Harstad, is one of two computer forensic experts in the state of ND. There are only two, they both work for the BCI and are overwhelmed with the amount of work that they are seeing, not just for this kind of activity but also for other internet and computer crimes. I think the turnaround time is around 4 months, the average amount of time that if the police come in with a computer and want it analyzed, you're looking at a 4 month delay just because of how hard drives they have at BCI. This is a serious offense. I think we need to send a message that we treat it as a serious offense. I've worked carefully with US Attorney Drew Wrigley. This legislation, and also with prosecuting offenses across the state of ND. It is important to send a message first of all to our young people, to remind them when they are on the internet, and in these chat rooms, to be careful, you don't know who you are talking to, it might be a predator. I also think it is important to send a message to the predator saying, you be careful too, you don't know who you're talking too, it just might be a cop. If you take these substantial steps after chatting and luring and inviting these young people to molest them, show up at the

meeting place, you're going to go to prison for at least a year. It takes a lot of time and energy to prosecute these cases. You have to find out exactly what computer these messages came from to present all the evidence to the court. These are not easy cases at all.

Rep. Meyer: Why is the age 22 years of age, instead of 21.

Wayne Stenehjem: You have to draw the line somewhere. We were looking at an age discrepancy that we think covers the most egregious examples and that's why we chose that. We tried to strike a balance.

Rep. Wolf: Is there funding in your budget to help inform schools to get more training or more information. I'm trained in my school district and there are just a handful of us that are trying to educate the kids on this.

Wayne Stenehjem: There is also a program called NetSmarts. It's not specifically in our budget, but it is one of the things that we work with the schools and local law enforcement to promote. It's not a specific budgetary line item, but we know it is very important and we really do need to send a message out to the young people who are on the internet, who think they are safer than they really are. You've got to be careful, you just don't know who you are talking to. You can't be sure.

Rep. Griffin: Are most of these cases prosecuted federally or at the state level.

Wayne Stenehjem: It's hard for me to answer that. They are relatively new cases, some are prosecuted federally and some of them are prosecuted locally. As I mentioned, when we see a particularly egregious case, we will very often call up the US Attorney and ask them to take the case because they know there is a five year minimum mandatory sentence, with no parole.

Rep. Onstad: On the testimony, first paragraph, "unless the adult did not take a substantial step towards meeting with the minor". Would they not be charged.

Wayne Stenehjem: The only thing that applies to is the minimum one year sentence. You have to lure the minor over the internet and take a substantial step, to actually have the meeting. Those are the two things that bring the minimum mandatory sentence into play. They are still criminal offenses, but the minimum mandatory only applies to those who take substantial steps.

Rep. Onstad: Are the chat rooms themselves monitored or does your office receive a heads up on it, and then look into it.

Wayne Stenehjem: We don't monitor these, but one of the agents who will go online and try to talk to the predators. Typically it won't be very long before you see someone coming in and talking to you. It can get rather graphic.

Rep. Koppelman: How does this compare to soliciting outside the state, I assume by electronic means. How does that have sufficient penalty towards that, how does it compare with solicitation for prostitution and that sort of thing. Is it more stringent.

Wayne Stenehjem: I think in most instances, more stringent. I think that is class B misdemeanors for prostitution soliciting.

Rep. Koppelman: What about the luring, if it's not over the internet, if someone tried to entice someone in person.

Wayne Stenehjem: Jon Byers can answer that. In addition to the computer guys that we have, who are overwhelmed. The local law enforcement has asked for additional computer forensic scientists up at BCI. There are only two people to do that, whether federal, state or local level. Jon Byers was employed several years ago by the AG's office, after the legislature passed a bill saying a lot of the local prosecutors need some help in prosecuting sex offenses, especially in the small counties that rarely see a rape case and aren't exactly sure how to do

that. Jon goes all over the state prosecuting these cases, and has become an expert in the state of ND on working on those cases.

Chairman DeKrey: Thank you. Further testimony in support.

Jonathan Byers, AAG: Why the 22 year old cutoff. That is to make it consistent with the other crimes that we have, such as sexual assault and corruption of a minor. By using the 22 years of age or older, it's consistent with the penalty where someone in a face to face contact with the minor, solicit that minor, these penalties are consistent with that. Some of these changes make it more consistent with those other pieces of legislation.

Chairman DeKrey: Thank you. Further testimony in support.

Steve Harstad, Special Agent with BCI, Forensic Computer: I have been online and using a persona of a 13 year old to try and entice these guys, or try to have them entice me, is probably the better verb. It is happening in ND, it is happening a lot. It is out there in ND. We are about 4 months behind in our case log. That's somewhere between 16 and 17 computers, which may be 9 or 10 cases, sometimes we have multiple computers for a case, which takes a little longer. Those cases range anywhere from luring to financial crimes, etc. As far as the luring cases that we do end up with at this time, most of them are reactive type cases. We are finding out from a parent who has found out, from law enforcement who's gotten involved because a child already has been molested. Essentially that is most of cases at this time. We are in the process of getting up and running in terms of doing these proactively. I think that's going to increase our case load for a while, hopefully when word gets out there, that these people are being put in jail that will turnaround a little bit. As far as training to get into this, it's just a few classes through The Internet Crimes Against Children that allow us to be able to go on line and do good cases for this type of crime. That's one of the things that is really missing

from the Dateline show. The quality of cases is not good on Dateline, I believe the quality of prosecution is pretty low.

Rep. Meyer: If a parent comes to you and says I think I have a problem with my child, do you take the computer, what happens in those cases.

Steve Harstad: In those cases, it depends on if the parent needs the computer for a business, we won't take it. We'll go in and take a forensic image from that computer and we always do all of our work from a forensic image of every computer that we work on. That allows us to leave the original evidence untouched in cases that we can do that. Or it gives us an exact copy of the computer at the time we were there. If that computer is necessary for a business or something for that parent, we won't take it. If possible, we can take over the persona of that child, so if there's a child currently being lured, and the parent finds out about it, and we can continue and take over that, we can do that also.

Rep. Klemin: (referring to the power point presentation on the screen) Is this live or an image.

Steve Harstad: This is a forensic image, this is something that happened in a case in the past. It's just scrolling by.

Rep. Klemin: Have you prosecuted any of these cases that you investigated.

Steve Harstad: Yes we have. I personally haven't had a case that I have done in the investigation on, but there have been cases in the state of ND that I've worked the forensic side of. Unfortunately those cases were where a child was chatting with somebody and being lured and the parent found out. We have had a few cases through Fargo.

Rep. Koppelman: What are the chances that as this type of law enforcement goes forward, in your opinion, can you capture more people in cases where they are actually luring someone and you come into the mix and capture that person versus you, enticing someone, posing as

the child. Are you getting at those situations where it's actually occurring or are you just drawing these people by pretending to be someone else.

Steve Harstad: I think that the people that I'm doing the chatting with are predisposed to doing that. Am I getting in between. I think so, because if it weren't me that they were chatting with, it's going to be some other child. It's whoever's out there. I had a case a couple of weeks ago, that the guy did not show up for the meet the next day. But within one hour, from the beginning of the chat, to the end of the chat, he had arranged to meet, time and place and told me what he was planning.

Rep. Koppelman: You were saying that you capture a computer or take an image where there's been some luring going on, maybe there's a minor involved and you step in and pose as a minor, have any of those scenarios had people arrested.

Steve Harstad: Yes, we have recently assisted with a case similar to that, where law enforcement stepped in and continued the chat with the gentleman and at that point, we were able to make an arrest and we now have his computer sitting in my office, waiting to be analyzed.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2248

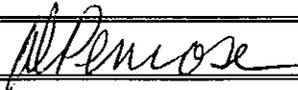
House Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/28/07

Recorder Job Number: 4129

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will take a look at SB 2248.

Rep. Delmore: I move that we amend the bill with the AG's amendments.

Rep. Meyer: Second.

Chairman DeKrey: Voice vote. Motion carried. We now have the bill before us as amended, what are the committee's wishes.

Rep. Delmore: I move a Do Pass as amended.

Rep. Wolf: Second.

14 YES 0 NO 0 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Wolf

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2248

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/6/07

Recorder Job Number: 4488

Committee Clerk Signature

Delmore

Minutes:

Chairman DeKrey: We will take a look at SB 2248. What are the committee's wishes.

Rep. Koppelman: I move that we reconsider our actions in regard to our passing out SB 2248 earlier.

Rep. Delmore: Second.

Chairman DeKrey: Voice vote. Motion carried. We now have the bill before us.

Rep. Delmore: I move to put on the second set of AG's amendments.

Rep. Koppelman: Second.

Chairman DeKrey: Voice vote. Motion carried. We now have the bill before us as amended.

What are the committee's wishes.

Rep. Koppelman: I move a Do Pass as amended.

Rep. Delmore: Second.

11 YES 0 NO 3 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Wolf

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2248

Page 1, line 3, after "penalty" insert "and declare an emergency"

Page 2, after line 8, insert:

4. The attorney general may issue an administrative subpoena compelling an internet service provider or cellular phone company to provide subscriber information to a law enforcement agency investigating a possible violation of this section.

Page 3, after line 8, insert:

"SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Renumber accordingly

Date: 2/28/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2248

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Rep. Delmore Seconded By Rep. Wolf

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	—	
Rep. Klemin	✓		Rep. Griffin	—	
Rep. Boehning	✓		Rep. Meyer	—	
Rep. Charging	✓		Rep. Onstad	—	
Rep. Dahl	✓		Rep. Wolf	—	
Rep. Heller	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Wolf

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

REPORT OF STANDING COMMITTEE

SB 2248, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2248 was placed on the Sixth order on the calendar.

Page 1, line 3, remove the second "and" and after "penalty" insert "; and to declare an emergency"

Page 3, after line 8, insert:

"SECTION 4. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Date: 3-6-07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2248

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Rep. Koppelman Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin			Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Meyer	✓	
Rep. Charging	✓		Rep. Onstad	✓	
Rep. Dahl			Rep. Wolf	✓	
Rep. Heller	✓				
Rep. Kingsbury					
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 11 No 0

Absent 3

Floor Assignment Rep. Wolf

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

REPORT OF STANDING COMMITTEE

SB 2248, as engrossed and amended: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). Engrossed SB 2248, as amended, was placed on the Sixth order on the calendar.

In addition to the amendments adopted by the House as printed on page 848 of the House Journal, Engrossed House Bill No. 2248 is further amended as follows:

Page 1, line 7, remove the underscore under the boldfaced period and insert immediately thereafter:

"1."

Page 1, line 9, overstrike "1." and insert immediately thereafter "a."

Page 1, line 16, overstrike "2." and insert immediately thereafter "b."

Page 1, line 21, overstrike "3." and insert immediately thereafter "2."

Page 2, after line 8, insert:

"3. The attorney general may issue an administrative subpoena compelling an internet service provider or cellular phone company to provide subscriber information to a law enforcement agency investigating a possible violation of this section."

Renumber accordingly

2007 TESTIMONY

SB 2248

Testimony of Attorney General Wayne Stenehjem
SB 2248
January 24, 2007

1. *Penalty increase*

Under current law, luring a minor by computer is either a class A misdemeanor or class C felony depending on the adult and child's ages. The attached amendments to Senate Bill 2248 will create 3 penalty classes for this offense, and will require at least a one year jail sentence for either of the felony classes, unless the adult did not take a substantial step towards meeting with the minor

2. *Electronic luring*

The current luring statute does not address the issue of text messaging that may not originate or be received at a computer. The attached amendments also add "or other electronic means" to clarify that electronic luring is illegal no matter what electronic source generates the solicitation.

3. *Jurisdiction and venue*

This bill makes it clear that North Dakota has jurisdiction over a predator who solicits a child in North Dakota, even if the adult is located in another state when the solicitation is made. The bill also provides for venue of a North Dakota luring case in either the county where the child is located or the where adult is located when the solicitation occurs.

AH # 2

1-24-07

INCREASE IN PENALTIES CONTEMPLATED BY SB 2248

AGE OF OFFENDER/VICTIM	CURRENT PENALTY CLASS	NEW CLASS	ONE YEAR MINIMUM MANDATORY SENTENCE?
Offender < 22, victim 15-17	A misdemeanor	A misdemeanor	No
Offender < 22, victim < 15	A misdemeanor	C felony	Yes
Offender \geq 22, victim 15-17	A misdemeanor	C felony	Yes
Offender \geq 22, victim < 15	C felony	B felony	Yes

AH #3
1-24-07

PROPOSED AMENDMENTS TO SENATE BILL NO. 2248

Page 1, line 1, after "sections" insert "12.1-20-05.1,"

Page 1, line 2, after "to" insert "the penalties for luring a minor by computer or other electronic means,"

Page 1, after line 4, insert:

"SECTION 1. AMENDMENT. Section 12.1-20-05.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-20-05.1. Luring minors by computer or other electronic means.

An adult is guilty of luring minors by computer or other electronic means when:

1. The adult knows the character and content of a communication that, in whole or in part, implicitly or explicitly discusses or depicts actual or simulated nudity, sexual acts, sexual contact, sadomasochistic abuse, or other sexual performances and uses any computer communication system or other electronic means that allows the input, output, examination, or transfer of computer data or computer programs from one computer or electronic device to another to initiate or engage in such communication with a person the adult believes to be a minor; and
2. By means of that communication the adult importunes, invites, or induces a person the adult believes to be a minor to engage in sexual acts or to have sexual contact with the adult, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for the adult's benefit, satisfaction, lust, passions, or sexual desires.
3. A violation of this section is a class A misdemeanor, ~~but if the adult is less than twenty-two years of age and reasonably believes the minor is age fifteen to seventeen. If the adult is less than twenty-two years of age and reasonably believes the minor is under age fifteen, or the adult is twenty-two years of age or older or and the adult reasonably believes the minor is under the age of fifteen to seventeen,~~ violation of this section is a class C felony. If the adult is twenty-two years of age or older and the adult reasonably believes the minor is under the age fifteen, violation of this section is a class B felony. An adult convicted of a class B or class C felony under this section must be sentenced to serve at least one year in jail. The court may sentence a person to less than one year if the

person did not take a substantial step towards actually meeting with the minor."

Renumber accordingly

Att # 4
1-24-07

SB 2248
Senate Judiciary
January 24, 2007

Mr. Chairman, members of the committee. My name is Ryan Bernstein, and I am legal counsel for the Governor.

I am here on behalf of the Governor to support Senate Bill 2248. The Governor, Attorney General Stenehjem, and members of the legislature have worked together to introduce several important pieces of legislation to address sexual offenders. This bill, as amended, brought forward by the Attorney General and members of the legislature furthers that work. This bill focuses on the most vulnerable members of our society – our children.

The bill would do several important things. First, it would ensure those who solicit our State's children are not outside the long arm of justice. The victims of these crimes deserve a recourse, and society needs a venue to prosecute those who prey on the young. This bill recognizes that the harm occurs at the victim's computer, not at the perpetrator's. The bill's provision allowing the state to prosecute out-of-state offenders who prey on children within this state is a step in the right direction.

The addition of the words electronic luring is needed to keep up with technology and the adaptability and cunningness of the offender. Means such as text messaging, which does not require a computer, is one of the many ways criminals may prey on the young who use technology every day.

Finally, the bill assigns three different penalty classes relating to the age of the offender and victim. The minimum mandatory sentence will send a message to the predators that this is a serious offense and that you will serve jail time for soliciting minors.

Mr. Chairman, members of the committee, thank you for your time.

AA #5
1-24-07

CHAT LINGO

A/S/Lage, sex, location
BF boyfriend
DIKU do I know you?
F2F face to face
GF girlfriend
H&K hug and kiss
ILU I love you
IPN I 'm posting naked
IWALU I will always love you
KOC kiss on cheek
KOL kiss on lips
LTR long term relationship
NIFOC naked in front of computer
NP nosy parents
OLL online love
P911 my parents are coming!
PA parent alert
PAL parents are listening
PANB parents are nearby
PM private message
POS parent over shoulder
TAW teachers are watching
WTGP want to go private

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Testimony of Attorney General Wayne Stenehjem

SB 2248

February 28, 2007

1. *Penalty increase*

Under current law, luring a minor by computer is either a class A misdemeanor or class C felony depending on the adult and child's ages. The amendments adopted in the Senate create 3 penalty classes for this offense, and will require at least a one year jail sentence for either of the felony classes, unless the adult did not take a substantial step towards meeting with the minor. The attached penalty chart explains the different classes.

2. *Electronic luring*

The current luring statute does not address the issue of text messaging that may not originate or be received at a computer. The Senate amendments also add "or other electronic means" to clarify that electronic luring is illegal no matter what electronic source generates the solicitation.

3. *Jurisdiction and venue*

This bill makes it clear that North Dakota has jurisdiction over a predator who solicits a child in North Dakota, even if the adult is located in another state when the solicitation is made. The bill also provides for venue of a North Dakota luring case in either the county where the child is located or the where adult is located when the solicitation occurs.

INCREASE IN PENALTIES CONTEMPLATED BY SB 2248

AGE OF OFFENDER/VICTIM	CURRENT PENALTY CLASS	NEW CLASS	ONE YEAR MINIMUM MANDATORY SENTENCE?
Offender < 22, victim 15-17	A misdemeanor	A misdemeanor	No
Offender < 22, victim < 15	A misdemeanor	C felony	Yes
Offender \geq 22, victim 15-17	A misdemeanor	C felony	Yes
Offender \geq 22, victim < 15	C felony	B felony	Yes