

Date Issued: March 4, 1981 (AGO 81-20)

Requested by: T. N. Tangedahl, Executive Director,
Social Service Board of North Dakota

- QUESTIONS PRESENTED -

I.

Whether an act, or failure to act, by a person responsible for a child's welfare, which allows, permits, or encourages a child to engage in prostitution or be subjected to other sexual abuses such as rape, molestation, or incest, constitutes child abuse or neglect which is subject to the reporting requirements of chapter 50-25.1 of the North Dakota Century Code.

II.

Whether an act, or failure to act, by a person responsible for a child's welfare, which allows, permits, or encourages a child to engage in the obscene or pornographic photographing, filming, or depicting of the child for commercial purposes or otherwise, constitutes child abuse or neglect which is subject to the reporting requirements of chapter 50-25.1, N.D.C.C.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that an act, or failure to act, by a person responsible for a child's welfare, which allows, permits, or encourages a child to engage in prostitution or be subjected to other sexual abuses such as rape, molestation, or incest, does constitute child abuse or neglect and is subject to the reporting requirements of chapter 50-25.1, N.D.C.C.

II.

It is my further opinion that an act, or failure to act, by a person responsible for a child's welfare, which allows, permits, or encourages a child to engage in the obscene or pornographic photographing, filming, or depicting of the child for commercial purposes or otherwise, does constitute child abuse and neglect and is subject to the reporting requirements of chapter 50-25.1, N.D.C.C.

- ANALYSIS -

Chapter 50-25.1, N.D.C.C., deals with child abuse and neglect and is designed to protect the health and welfare of children by the reporting of child abuse and neglect.

Section 50-25.1-04(4)(b), N.D.C.C., includes as "harm" to a child, the committing, allowing to be committed, or the conspiring to commit, against a child, a sex offense as defined in chapter 12.1-20, N.D.C.C. The acts of prostitution and other sexual abuses such as rape, molestation, or incest are defined as criminal acts in chapters 12.1-20 and 12.1-29, N.D.C.C.

The definitions of "sexual act" and "sexual contact" are defined in sections 12.1-20-02 and 12.1-20-03, N.D.C.C. Section 12.1-20-05, N.D.C.C., makes the engaging in a sexual act or sexual conduct with a victim less than eighteen years of age a criminal offense.

Sections 12.1-20-06 and 12.1-20-07, N.D.C.C., make a sexual act or conduct by a person who is in the position of parent, guardian, official custodian in a hospital, prison, or other institution having control over a minor in a hospital, prison, or other institution, a criminal offense. Incest is defined in section 12.1-20-11, N.D.C.C., and is a criminal offense. Prostitution is also a criminal offense under section 12.1-29-03, N.D.C.C.

These sections make manifestly clear the intent of the Legislature in defining the conduct set forth above as criminal. As such, either allowing a child to be subjected to or subjecting the child to such conduct as set forth above constitutes harm which is subject to the reporting requirements of chapter 50-25.1, N.D.C.C.

Likewise, there can be no doubt that any photographing, filming, or depicting of a child in acts defined as sex offenses would constitute "harm" as defined in chapter 50-25.1, N.D.C.C. In addition to "harm" section 50-25.1-02, N.D.C.C., defines a neglected child as a "deprived child" as found in chapter 27-20, N.D.C.C. The definition of a deprived child as found in section 27-20-02(5), N.D.C.C., would clearly include a child that is engaged in the photographing, filming, or depicting of obscene or pornographic acts, which are acts defined by the North Dakota Century Code as criminal offenses and would, therefore, be detrimental to the child's physical, mental, or emotional health or morals.

Section 12.1-27.1-03(2), N.D.C.C., states:

It shall be a class C felony to permit a minor to participate in a performance which is harmful to minors. (Emphasis supplied).

Sections 12.1-27.1-01, 12.1-27.1-02, and 12.1-27.1-03, N.D.C.C., make a knowing dissemination, production, transportation, or other dissemination of obscene material a criminal offense in North Dakota. Those same sections make a knowing involvement of a minor in any material or performance, which is harmful to the minor, a criminal offense.

Accordingly, there is absolutely no doubt in the mind of the Attorney General that allowing a child to engage in or causing a child to engage in the acts set forth above constitutes harm and as such the child involved and the persons with knowledge of the harm to the child are subject to the reporting requirements of the child abuse and neglect law, chapter 50-25.1, N.D.C.C.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the questions presented are decided by the courts.

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