



**DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL**

MEMORANDUM

DATE: February 4th, 2016

TO: Honorable Floyd Prozanski, Chair
Senate Committee on Judiciary

FROM: Aaron Knott, Department of Justice Legislative Director

SUBJECT: SB 1567 – Creates the Crime of Criminal Impersonation

This testimony is presented in support of SB 1567, which creates the new crime of criminal impersonation.

BACKGROUND

The California case of Jebediah Stipe highlights a new and dangerous form of cyber-exploitation. After separating from his girlfriend, Stipe impersonated her on Craigslist and other websites, creating profiles in her name which solicited anonymous violent sexual encounters. After several men responded to the solicitation, Stipe continued to correspond via E-Mail with these men under his former girlfriend's assumed identity, ultimately arranging for a man to go to her home and sexually assault her, and providing the assailant with instructions to continue the assault no matter how much resistance he encountered. She was ultimately raped at knifepoint. Stipe was convicted as an accomplice. While this is an extreme example, the conduct of impersonating another on websites and social media with the intent of humiliating or harming is becoming more common. Cyber impersonation has also been linked to the suicides of several teens. The Department of Justice is aware of several Oregon cases wherein a person, usually a former romantic partner or stalker, impersonates another on internet singles sites and solicit sex in their name for the purpose of humiliating them or placing them in peril.

The crime of identity theft is located at ORS 165.800. This crime prohibits a person from impersonating another with the intent to "deceive or defraud." This term has been interpreted by the Court of Appeals as containing a financial element. Identity theft has its roots in theft – it is for this reason that the charge is housed in the "Property Offenses" chapter of the Oregon Revised Statutes – and does not cleanly apply to cases wherein the use of another person's identity is being conducted not with the intent to defraud but to humiliate, harm or harass.

LC 101 CREATES THE CRIME OF CRIMINAL IMPERSONATION

SB 1567 closes the loophole in existing law by making clear that acts of impersonation committed with the intent to humiliate, harm or harass are criminal under Oregon law. This new crime would apply when an individual, with the intent to injure, intentionally impersonates another in a communication to a third person without their consent, act with the intent to deceive the third person into believing that they are communicating with the impersonated person, and that injury results, defined as humiliation, harassment, threat or physical harm.

This language brings the proposal into the very narrow space provided legislation by Article I, Sec. 8 of the Oregon Constitution, which provides expansive protections to speech going beyond that guaranteed by the Federal Constitution. Developed in close consultation with the Multnomah County District Attorney's Office, Oregon Criminal Defense Lawyers Association, American Civil Liberties Union and Electronic Frontier Foundation, LC 101 meets the high requirements articulated by the Oregon Supreme Court in *State v. Robertson*, 293 Or. 402 (1982), which remains the controlling test for determining the Oregon Legislature's ability to constrain speech in order to punish criminal harm and is narrowly tailored to pass constitutional muster. The crime of criminal impersonation would be punishable as a Class A Misdemeanor. While much of the conduct targeted by this proposal is peculiar to the internet, the crime would apply equally to on-line and off-line conduct, similar to the current crime of Identity Theft.

An existing crime presently named "criminal impersonation," involving the impersonation of public officials, would be renamed "criminal impersonation of a public servant." See ORS 162.365. Legislative Counsel made another purely cosmetic change to this section, moving the phrase "An active member or veteran of the Armed Forces of the United States" from 162.365(1)(b) to 162.365(4). These are "clean-up" changes from Legislative Counsel which have no effect on the substance of the statutory provision.

FISCAL IMPACT

The Department of Justice does not anticipate a significant fiscal stemming from this legislation. The nearest statutory analogue to this crime is arguably Senate Bill 188, which created the crime of unlawful dissemination of an intimate image and which was in several significant regards the statutory template for SB 1567. That proposal ultimately received a minimal fiscal.

CONTACT

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