



February 1, 2023

Senate Committee on Judiciary
Oregon State Legislature
900 Court St. NE
Salem, OR 97301

RE: Testimony in Support of Senate Bill 605

Dear Chair Senator Prosanski, Vice Chair Senator Thatcher, Senator Dembrow, Senator Linthicum, Senator Gelser Blouin, & Senator Manning

Thank you for the opportunity to provide testimony on behalf of the American Civil Liberties Union of Oregon (ACLU of Oregon). The ACLU of Oregon is a nonpartisan, nonprofit organization dedicated to preserving and enhancing civil liberties and civil rights, with more than 27,000 members statewide.

The ACLU of Oregon strongly supports Senate Bill 605, which appropriately protects young Oregonians from criminalization and felonization for common & consensual teenage sexting practices. It does this by creating an affirmative defense to prosecution when the activity involves close in age minors consensually distributing sexually explicit images.

A majority of teenagers use cell phones, and according to numerous studies, at least 20% of them use their phones to exchange private images of themselves, mostly with someone they are dating. This exposes a large number of young people to potential criminal prosecution for engaging in the common and consensual activity of sexting with other young people of similar age.

We are always wary anytime the government inserts itself into consensual intimate relations. Too often that power is disproportionately wielded against already marginalized people. Consensual sexting by young people and adults should not be criminally prosecuted. Prosecution of consensual sexting between young people wastes limited taxpayer dollars and criminal legal system resources and diverts such monies and resources away from the serious crimes that impact the actual safety of communities.

Unfortunately, under current Oregon law, devoted teen partners sharing an intimate photograph can face the same criminal punishment as a bully who maliciously sends a naked picture of an ex to the entire school. Both the consenting teen couple and the bully can be convicted of felonies under the law, because **Oregon law currently makes no distinction between these very different situations — especially with regard to the presence of consent and harassment.**

Current laws also penalize harassment victims in underage sexting cases just as harshly as the perpetrators. Consider the following scenario: a minor sends a nude picture to a romantic partner and the partner later forwards the image to friends and classmates after the couple breaks up. Although the second sender is clearly the bad actor, the law holds everyone involved equally culpable — meaning both can be convicted of a felony. **Facing the same punitive measures as the person who harmed them by disseminating private photos discourages teens from reporting harassment and exploitation of their intimate images.**

SB 605 will create an affirmative defense to protect minors who consensually share sexually explicit images of themselves and shield them from prosecution. This bill clearly outlines that affirmative defense will only be applicable for non-coercive sexting that includes minors within 3 years of age and where there is no coercion or financial inducement.

The passage of SB 605 will encourage teenagers to report when an intimate photo is leaked and seek help from adults to prevent exploitation and harassment. **The ACLU of Oregon urges your support for Senate Bill 605 and asks you to pass it out of committee.**

Respectfully,

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