TO: House Criminal Justice Committee

FROM: Gary Daniels, Chief Lobbyist, ACLU of Ohio

DATE: April 10, 2018

RE: Amended House Bill 355 – Opponent Testimony

AMERICAN CIVIL
LIBERTIES UNION
OF OHIO
4506 CHESTER AVENUE
CLEVELAND, OH 44103-3621
T/216.472.2220
F/216.472.2210
WWW.ACLUOHIO.ORG
contact@acluohio.org

To Chairman Manning, Vice Chair Rezabek, Ranking Member Celebrezze, and members of the House Criminal Justice Committee, my name is Gary Daniels, chief lobbyist for the American Civil Liberties Union of Ohio ("ACLU of Ohio") and I appear to present opponent testimony on Amended House Bill 355.

Supporters of HB 355 have framed this bill as providing needed guidance to prosecutors, courts, and attorneys regarding how to treat young people who create, possess, or transmit "sexually explicit digital material." Under current law, prosecutors may opt to charge minors with serious sex-related and/or felony offenses when many believe such actions do not warrant such harsh punishment.

Accordingly, HB 355 creates an additional option – a brand new misdemeanor offense, this one "possession of sexually explicit material." With the creation of this crime, judges and courts may then, but are not required to, assign minors to eight hours of criminal service where legal and non-legal ramifications of sexting will be explained to them.

While this surely sounds good to some, the ACLU of Ohio asks members of this committee to reject HB 355 as counterproductive and unnecessary. Our specific concerns are as follows:

If the core problem is the ability of prosecutors and judges to apply serious charges and offenses in an otherwise unwanted manner, then the solution should be to explicitly eliminate from the criminal code that possibility in these lesser situations.

As this committee is well aware, the creation of a new criminal offense, including a misdemeanor, especially one titled "possession of sexually explicit material," defined under the bill as a "sex-related offense," will still result in numerous negative ramifications for these young people. How likely will an employer be to hire these people? How many landlords will rent them a home? How will this affect their education prospects?

Even if HB 355 passes, a 17-year-old in a legal and consensual sexual relationship may still get in serious legal and lifelong trouble for merely possessing a nude photo of her 17-year-old boyfriend on her phone. Indeed, this bill in no way requires prosecutors to utilize this new misdemeanor offense or judges to sentence young people to only community service. It only gives them that option.

Whether the punishment be a felony or misdemeanor, the ACLU of Ohio fails to understand why such a scenario, and others like it, should be of interest to law enforcement. Again, the best answer is for the Ohio General Assembly to end this possibility.

In addition, any positive benefit a young person might receive from information presented to them in a diversion program can be accomplished in a number of others way that do not involve police, prosecutors, judges, courts, and criminal records.

As mentioned in previous testimony from the Ohio Judicial Conference, jurisdictional problems also arise from HB 355's applications to the actions of 19-year-olds. HB 355 also suffers from broad and unclear language I chose not to address in this testimony because the ACLU of Ohio's position is, as stated, to altogether remove the possibility of criminal charges when they are not necessary or warranted.

HB 355 is not needed. It creates additional problems with no guarantee it will solve any. It involves government in numerous, unwelcome instances. The ACLU of Ohio urges rejection of this well-meaning but misguided and harmful legislation.