

Oppose SB 2855 (Mathias)



Criminalization of Harmless Electronic Communications

SB 2855 (Representative Mathias) represents a substantial departure from traditional norms of criminal law by criminalizing e-mails that are not a substantial step toward the commission of an offense, and by requiring longer offenses for attempt crimes than actual offenses. SB 2855 impermissibly infringes on Free Speech.

SB 2855, as amended, makes it a crime for:

- (i) A person age 18 or older to electronically communicate with a person who is actually or perceived to be under age 18; (ii) “with the **intent to commit a violation of Article 11**” (sex offenses) **“or Article 12**” (bodily harm) “of the Criminal Code of 1961 with that person.”

SB 2855, As Amended, Is Flawed for the Following Reasons:

- **It Turns the Concept of Existing “Inchoate Crimes” on its Head:** The Illinois Criminal Code has long defined “inchoate offenses” – such as attempt and conspiracy – to require proof of some action in advancement of a crime. For example, “attempt” requires proof of “any act which constitutes a substantial step toward the commission of that offense.” 720 ILCS 5/8-4. And, “conspiracy” requires that a co-conspirator take “an act in furtherance” of the agreement to commit a crime. 720 ILCS 5/8-2. SB 2855, instead, criminalizes the mere sending of an email or an IM between a person age 18 or older and a person age 17 or younger – which might include two high school seniors who regularly communicate electronically. By no means is an email “a substantial step toward the commission” of a crime. Speech on the Internet and through other electronic means is an emerging and critical realm that must be given the highest levels of First Amendment deference and protection.
- **It Invites Greater and Longer Sentences for Attempted Offenses than for Actual Offenses:** All **attempted** crimes criminalized under SB 2855 would be Class 4 Felonies. Yet, committing many of the **actual** crimes under Articles 11 and 12 are lower crimes and lead to lesser sentences. For example, under SB 2855, an 18 year old high school senior that emails her 17 year old classmate encouraging that friend to get a body piercing would be guilty of a Class 4 Felony; when the actual act of unlawful piercing under Article 12 is only a Class A misdemeanor. 720 ILCS 5/12-10.1. Moreover, under SB 2855, an 18 year old cousin that IMs his 17 year old cousin offering to sell a “yo-yo waterball” obtained out-of-state would be guilty of a Class 4 Felony. The actual sale of a yo-yo waterball, however, is only punishable by a \$1,000 fine. 720 ILCS 5/12-21.7. In short, SB 2855’s “one-size-fits-all” approach is out of step with traditional sentencing principles and runs afoul of the Proportionate Penalty Clause of the Illinois Constitution, 1970 Ill. Const., art. I, sec. 11.

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(4/26/2008)