

OFFICE OF THE PUBLIC DEFENDER

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April 24, 2024

TESTIMONY OF THE OFFICE OF THE PUBLIC DEFENDER (OPD) REGARDING:

House Bill No: H7798

ENTITLED, AN ACT RELATING TO CRIMINAL OFFENSES -- STALKING

Chairman Craven and Member of the Judiciary Committee:

The Office of the Public Defender opposes H7798, which proposes the creation of a new offense in the stalking statute known as "video harassment." While we understand the importance of addressing concerns related to stalking and harassment, we believe that this bill raises serious constitutional and legal issues that warrant reconsideration.

Our primary concerns with H7798 are twofold. Firstly, the standard for violating the statute is overly broad and subjective, as it requires only a finding that the conduct was "seriously annoying." This lacks the necessary precision and specificity typically required in criminal statutes. The absence of a requirement for actual harm, alarm, or concern makes the statute susceptible to arbitrary enforcement and may infringe upon an individual's right to freedom of expression. However, even if a more stringent requirement were used in the bill, we propose that the legislation would still raise significant constitutional concerns as highlighted in our second point.

Secondly, and more significantly, the bill has the potential to criminalize constitutionally protected activities, such as recording public officials in public spaces, filming celebrities, politicians, and other public figures, as well as other forms of constitutionally protected photography. The First Amendment guarantees the right to freedom of speech, expression, and press, and any legislation that threatens this fundamental right must be approached with great caution. We believe that the bill would unduly restrict the public's ability to engage in legitimate and lawful activities, including documenting matters of public interest. While the statute uses terminology that it only criminalizes acts that serve "no legitimate purpose," that does not serve as a barrier to arrest but gives police the authority to determine what they believe to be legitimate photography.

Moreover, the First Amendment protects the right to photograph things that may be seen with the eyes in public spaces. By criminalizing certain types of video recording, H7798 may infringe upon this constitutionally granted right. This raises significant concerns about the potential for chilling effect on the exercise of free speech and impinging upon the public's right to gather information and hold those in power accountable.

Considering these concerns, we respectfully urge you to reconsider and amend H7798 to address the aforementioned issues. We believe that it is possible to draft legislation that adequately addresses the legitimate concerns surrounding video harassment while preserving and respecting the constitutional rights of individuals. Our office is more than willing to collaborate with the committee and provide any necessary expertise to ensure

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that the final legislation strikes an appropriate balance between protecting individuals and safeguarding fundamental rights.

Thank you for your attention to this matter, and we look forward to working together to find a solution that upholds both the law and constitutional principles.

Sincerely,

A handwritten signature in blue ink, appearing to read "C R Pouliot-Alvarez".

Curtis R. Pouliot-Alvarez, Esq.
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