

OFFICE OF THE PUBLIC DEFENDER

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

House Bill No. 5046

ENTITLED, AN ACT RELATING TO CRIMINAL OFFENSES – ELECTRONIC IMAGING DEVICES.

Chairman Craven and Members of the House Judiciary Committee:

The Office of the Public Defender opposes HB5046 in its current form. While we acknowledge the importance of addressing issues surrounding the non-consensual creation and dissemination of explicit material, we believe that the legislation as proposed could be vulnerable to constitutional challenges based on its vagueness and overbreadth. In our view these concerns warrant careful consideration and revision.

First, subsection (a) refers to images “created by a digital device or altered by digitization” without defining those terms in the “Definitions” section of the statute, R.I.G.L. § 11-64-1, or elsewhere in the chapter. The lack of a clear and specific definition creates ambiguity and uncertainty, leaving individuals without a clear understanding of what conduct is prohibited. For this legislation to not run afoul of the due process guarantees of both the state and federal constitutions it must provide ordinary citizens with fair warning of what is unlawful to enable them to conform their conduct to the law. The lack of clarity in the proposed legislation could also result in arbitrary enforcement, as it fails to provide courts and law enforcement officers with sufficient standards as to what is proscribed.

Second, the broad scope of the language used in the proposed legislation raises concerns that it is capable of reaching constitutionally protected speech. The legislation may unintentionally criminalize artistic, political, or expressive works that utilize digital technology in their creation, even if they are not intended to exploit or harm individuals. As written, this legislation encompasses any digitally created or altered image that depicts an identifiable adult’s intimate areas, or that depicts them engaged in sexually explicit conduct. This would conceivably include images created on one of the ubiquitous applications that turn photographs into realistic cartoons, as well as identifiable caricatures.

Criminalizing such images would run far afield of the goal of the legislation, which is presumably to deter the creation and dissemination of images of a person in which his or her face, body, or voice has been digitally altered so that he or she appears to be someone else, he or she appears to

Administration	Appeals	Felony Division	Misdemeanor/PAC	Licht VOP Unit	Family Court	Investigations
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be saying something that he or she has never said, or he or she appears to be doing something that he or she has never done.

The Office of the Public Defender respectfully suggests that the Committee considers holding the bill for further study to address these concerns. Clear and specific definitions, as well as explicit safeguards to protect free speech and due process rights, should be incorporated to ensure that the legislation achieves its intended purpose without unduly restricting constitutionally protected activities.

Sincerely,

A handwritten signature in blue ink, appearing to read "Megan F. Jackson", with a long horizontal flourish extending to the right.

Megan F. Jackson
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