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April 1, 2025

TESTIMONY OF THE OFFICE OF THE PUBLIC DEFENDER REGARDING:

House Bill No: HB5437

ENTITLED, AN ACT RELATING TO CRIMINAL OFFENSES – JAILS AND PRISONS

Chairman Craven and Members of the House Judiciary Committee:

The Office of the Public Defender has concerns about HB5437, which would prohibit people from conveying items to or from the Rhode Island Training School (RITS) without prior consent by the Executive Director of the Division of Youth Development at the Department of Children, Youth and Families (DCYF). While we acknowledge the need to prevent contraband from entering the RITS, we have some concerns about whether the language of the current proposal would unintentionally prohibit more than the targeted reach. In addition, we believe that the introduction of this bill provides an opportunity to address some statutory construction and other practical issues with the existing statute that it references.

First, while the section of the statute that the bill proposes to amend is entitled, “Conveyance of unauthorized articles to or from institutions,” the body of the statute prohibits the conveyance of “*any article*” without the consent of the director of corrections or the executive director of the DYD. Our office is concerned that the language would unintentionally proscribe more than merely contraband, as it simply prohibits the conveyance of any article without consent.¹ At a minimum, the word “unauthorized” should appear both in the title and in the body of the law.

Second, neither the existing statute nor the proposed bill sets out a mechanism for obtaining consent to convey articles should the director of corrections or the executive director of DYD be unavailable. We would suggest adding language allowing a designee of the directors to provide consent in their absence.

Additionally, neither the existing statute nor the proposed bill provides an exception for legal counsel. An attorney bringing a legal document—which would arguably fit within the commonly used definition of “any article”—to the department of corrections or the RITS would seemingly be in violation of this law if they did not first obtain the consent of the respective director.

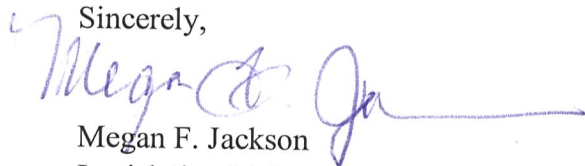
¹ We would note further that “article” is not defined in the existing statute or proposed bill.

Further, our office has concerns about the incongruity of the penalty for violating this law as compared with other sections in this chapter. An individual found to be in violation of the proposed law would face up to ten (10) years imprisonment, the same penalty that an individual would face for conveying tools for escape, if the prisoner succeeds in escaping. *See* R.I.G.L. § 11-25-8. Notably, if a person conveys tools for escape and the prisoner does not escape, the individual would face a maximum of five (5) years incarceration. *Id.* The punishment for conveying “any article” would therefore be double that of conveying tools for escape if the tools were not used successfully.

An examination of section nine of chapter twenty-five makes the proposed statute even more confusing. That section, entitled “Assisting inmate of correctional institutions to escape,” includes among the prohibited conduct, “convey[ing] tools or instruments to or in any way assist in the escape or attempted escape of any person from any institution under the management and control of the department of corrections.” R.I.G.L. §11-25-9. That conduct is deemed a misdemeanor punishable by up to three years imprisonment.

Thank you for your consideration of these concerns. Our office would welcome the opportunity to discuss language that would more effectively carry out the public safety goals that the proposed bill attempts to achieve.

Sincerely,



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