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TESTIMONY OF THE OFFICE OF THE PUBLIC DEFENDER REGARDING:

House Bill No. 5440

ENTITLED, AN ACT RELATING TO CRIMINAL PROCEDURE – ARREST

Chairman Craven and Members of the House Judiciary Committee:

The Office of the Public Defender opposes House Bill 5440, which proposes to grant security personnel, guards, and safety officers employed by private universities the authority to detain individuals without a warrant under certain circumstances. We believe that this bill raises serious concerns related to civil liberties, due process, and accountability.

The proposed bill states that “the governing board of any private state-charted institution of higher education¹ which maintains a campus or other real property for educational purposes *may* establish a security, public safety office, or similar department, which employs or contracts with special police officers, public safety officers, security personnel or similar individuals.” (Emphasis added.) The bill then states that “[t]he appointment of special police officers and the powers granted to those individuals shall be governed by chapter 2.1 of title 12.”

Chapter 2.1 of Title 12 gives the superintendent of state police the right to appoint special police officers who “must have satisfactorily completed the established course of training the police training school as established in this state.” The chapter also delineates the powers of those special police officers, which include the power to arrest when criminal statutes have been violated. Special police officers would therefore be subject to the same standards typically required for police intervention and arrest and would have to comply with constitutional requirements such as the advisement of Miranda rights.

While the proposed bill *permits* the higher-education institutions to employ or contract with special police officers, it does not require it, instead permitting in the alternative the employment of public safety officers, security personnel or similar individuals.” The bill allows for those other “non-sworn public safety officers and security guards [to] without a warrant, detain any person for any criminal offense, whenever the public safety officer or security guard has reasonable grounds to believe that an offense has been committed” for a period of up to thirty (30) minutes.

This provision establishes a lower standard for detention than what is required for law enforcement officers. Allowing private university security personnel to detain individuals based

¹ The Office of the Public Defender believes that some clarification is needed as to what constitutes a “private state-charted institution of higher education.”

on “reasonable grounds,” without meeting the standard typically required for police intervention, poses a significant risk of unjustified and arbitrary detentions. In addition, granting broad detention powers to private university personnel without adequate oversight may lead to discriminatory practices. Individuals from marginalized communities may be disproportionately targeted, exacerbating existing disparities in the criminal justice system.

The language in the proposed bill calls to mind language in section 11-41-21, which permits merchants to temporarily detain suspected shoplifters when “the merchant has reasonable grounds to believe that at the time stopped the person was committed or attempting to commit the crime of shoplifting.” However, there are several key differences between that section and the proposed bill.

1. The law prohibits the use of “unreasonable restraint or excessive force” and sets forth the specific circumstances in which restraints are permitted.
2. The law provides that once detained, individuals are not required to give further information and prohibits the merchant from eliciting a written and/or signed statement until a police officer has taken the detainee into custody.
3. “Reasonable grounds” is defined in the statute to include “knowledge that a person has concealed unpurchased merchandise of the establishment while on the premises, or has altered or removed identifying labels on merchandise while on the premises, or is leaving the premises with unpurchased concealed or altered merchandise in his or her possession.”

House Bill No. 5440 does not contain the same safeguards² while giving non-sworn public safety officers and security guards the power to detain people if they have “reasonable grounds” to believe that any criminal offense has been committed.

In light of these concerns, the Office of the Public Defender urges the committee to consider the implications of House Bill No. 5440 on the rights and freedoms of individuals within our community. We recommend collaborative efforts to address public safety concerns while safeguarding the constitutional rights of all citizens.

Sincerely,

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² While the proposed bill includes a provision requiring non-sworn public safety officers and security guards to be trained in the proper use of restraint devices and to abide by locally or nationally recognized use of force policies, the level of training is unspecified and would likely fall short of that required of special police officers, who would face a higher standard for detaining individuals.