

# OFFICE OF THE PUBLIC DEFENDER

160 Pine Street, Providence, Rhode Island 02903

TELEPHONE: (401) 222-3492

FAX: (401) 222-3287

EMAIL: [info@ripd.org](mailto:info@ripd.org)

WEBSITE: [www.ripd.org](http://www.ripd.org)

March 25, 2025

## TESTIMONY OF THE OFFICE OF THE PUBLIC DEFENDER REGARDING:

**House Bill No: HB5655**

**ENTITLED, AN ACT RELATING TO CRIMINAL OFFENSES -- STALKING**

Chairman Craven and Member of the House Judiciary Committee:

The Office of the Public Defender opposes HB5655, 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 the proposed bill are twofold. First, the standard for violating the statute is overly broad and subjective. Unlike with the definition of “harasses” as applied to the crime of stalking, the definition as it relates to video harassment requires neither that the actor intend to seriously alarm, annoy, or bother the person, nor that the conduct would cause a reasonable person to suffer “substantial emotional distress, or be in fear of bodily injury.” Instead, the proposed bill defines harassment as conduct that a reasonable person would consider “seriously annoying,” a standard that falls far short of warranting criminal consequences. 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.

Second, and more significantly, the bill has the potential to criminalize constitutionally protected activities, such as recording public officials in public spaces, filming celebrities, politicians, or other forms of constitutionally protected photography. The First Amendment guarantees the right to freedom of speech and expression, 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.<sup>1</sup> That the statute’s reach is limited to acts that serve “no legitimate purpose” does not cure the constitutional infirmity. Rather than serving as a barrier to arrest, it gives police the authority to determine whether the video recording is legitimate.

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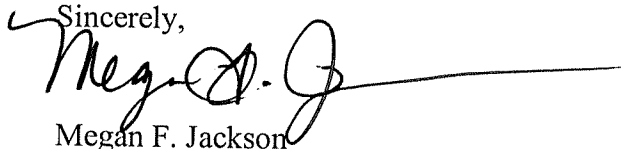
<sup>1</sup> “It is firmly established that the First Amendment’s aegis . . . encompasses a range of conduct related to the gathering and dissemination of information.” *Glik v. Cunniffe*, 655 F.3d 78, 82 (1st Cir. 2011).

Moreover, the First Amendment protects the right to record anything that can be seen with the eyes in public spaces.<sup>2</sup> By criminalizing certain types of video recording, HB5655 may infringe upon this constitutionally granted right. This raises significant concerns about the potential for a chilling effect on the exercise of free speech and impinging upon the public's right to gather information.

We respectfully urge you to reconsider and amend HB5655 to address these 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 to ensure 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 balances public safety concerns with the protection of constitutional rights.

Sincerely,

A handwritten signature in black ink, appearing to read "Meg. F. Jackson", followed by a long horizontal line extending to the right.

Megan F. Jackson  
Legislative Liaison  
Office of the Public Defender  
401-222-1509  
[mjackson@ripd.org](mailto:mjackson@ripd.org)

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<sup>2</sup> “[I]f a person engaged in recording is lawfully present, video recording can be understood as little more than the technological enhancement of her individual powers of observation. The right to record is essentially a right to memorialize or enshrine one’s interactions or observations.” Marceau, Justin & Chen, Alan K., *Free Speech and Democracy in the Video Age*, 116 Columbia L. Rev. 1029 (2016).