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ACLU OF RI POSITION: OPPOSE

TESTIMONY ON 25-H 5655, AN ACT RELATING TO CRIMINAL OFFENSES - STALKING March 25, 2025

The ACLU of Rhode Island opposes this legislation, which seeks to expand the current definition of stalking. While we do not question the motivations behind it, we are concerned about the breadth of this proposed new crime and its potential impact on protected citizen speech and lawful news gathering activities.

Unlike the current definition of stalking, this new offense would not require that the prohibited conduct cause a reasonable person to suffer substantial emotional distress or fear bodily injury – or any harm at all. Nor would it require that the alleged offender have an intent to “seriously alarm” the person. Instead, stalking would now encompass following somebody with a recording device in a public place in a way that a reasonable person would consider “seriously annoying.” In other words, under this new crime, the state need not prove any sort of mens rea requirement on the part of the alleged offender, nor would there be any requirement that the alleged victim show that they were harmed or fearful of harm – emotional or physical in any way. Even if a “reasonable person” might be “seriously annoyed” by the conduct, we do not consider annoyance to be a legitimate standard for a criminal offense.

While both the current definition of stalking and this proposed expansion require that the “harassment” “serve no legitimate purpose,” that term is nowhere defined and could easily lead to criminal charges in questionable circumstances, forcing an individual to face a trial for the determination of whether the “harassment” had a legitimate purpose. One could easily imagine an intrepid, if abrasive, news reporter falling afoul of this broad new crime by following a public official for comment. If the official brushes off the reporter by saying he will not answer any questions, one could argue that the reporter had no “legitimate purpose” in continuing to follow and question the official with their camera. Similarly, police officers could use this law to arrest individuals who aggressively, but constitutionally, record the activities of the officers in their interactions with the public. The fact that the person may ultimately have a First Amendment defense does not mitigate the harm caused by having a law that allows the arrest of the person in the first place.

For these reasons, the ACLU urges the committee to reject this bill.