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TESTIMONY OF THE OFFICE OF THE PUBLIC DEFENDER REGARDING:

House Bill No. 5923

ENTITLED, AN ACT RELATING TO CRIMINAL OFFENSES – CHILDREN.

Chairman Craven and Members of the House Judiciary Committee:

The Rhode Island Public Defender opposes HB5923, a proposal purporting to criminalize the production, distribution, or possession of obscene materials depicting a “minor” engaged in sexually explicit conduct. While we understand the importance of addressing concerns related to explicit materials, this bill, as currently drafted, raises significant constitutional and free speech rights issues.

Our primary concern with HB5923 lies in the potential infringement upon the First Amendment rights of individuals, particularly with regards to the broad scope of materials covered by the proposed legislation. The bill's definition of obscene materials encompasses a wide range of expressive content, including books, pamphlets, pictures, cartoons, films, drawings, sculptures, photographs, videos, or computer-generated images. The inclusion of such a broad array of materials risks stifling lawful speech and artistic expression, leading to unintended consequences and violating the principles of free speech.

Furthermore, the aspect of the bill that does not require the person depicted in the work to actually exist introduces an additional layer of complexity. The potential criminalization of works involving fictional characters or computer-generated images raises concerns about the impact on artistic, literary, and cinematic expressions that may not involve any real individuals.

We recognize the importance of addressing the protection of minors from exploitation and harm, but HB5923, in its current form, poses a threat to constitutionally protected rights and has the potential to chill lawful speech. Rather than safeguarding the interests of the vulnerable, it risks stifling artistic and creative endeavors that may involve fictional or computer-generated representations. See Ashcroft v. Free Speech Coalition, 535 U.S. 234 (2002) (holding a law that prohibits “virtual child pornography,” where no actual child is depicted, violates the free speech clause of the First Amendment).

The Rhode Island Public Defender urges the Judiciary Committee to hold HB5923 for further study. We believe that any legislation aimed at addressing explicit materials should be

carefully tailored to avoid unintended consequences and respect the fundamental principles of free speech.

Sincerely,

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