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TESTIMONY OF THE OFFICE OF THE PUBLIC DEFENDER REGARDING:

House Bill No. 6133

ENTITLED, AN ACT RELATING TO CRIMINAL PROCEDURE – INDICTMENTS, INFORMATIONS AND COMPLAINTS.

Chairman Craven and Members of the House Judiciary Committee:

The Office of the Public Defender opposes the proposed legislation, which would extend the statute of limitations for second-degree sexual assault to ten years from the date of the offense, or, in the case of a victim who is under the age of eighteen (18) at the time of the offense, ten (10) years from the victim's eighteenth birthday. As our Supreme Court has said, "statutes of limitation are intended to foreclose the potential for *inaccuracy* and *unfairness* that stale evidence and dull memories may occasion in an unduly delayed trial."¹

Statutes of limitations serve three key purposes in the criminal context: (1) to ensure valid criminal cases are pursued with reasonable diligence; (2) to minimize the potential for the loss of evidence necessary to defend against the allegation; and (3) to allow allegations to be litigated before memories fade and evidence grows stale.

The statute that would be amended by this proposed legislation has varying statutes of limitation by crime severity and reflects the principle that more serious offenses have longer limitation periods or none at all. For example, murder, robbery, and first-degree sexual assault have no SOL, partly because physical evidence is typically preserved in such cases. In contrast, for crimes like second-degree sexual assault, where physical and other corroborating evidence may be less readily available, the statute of limitations plays a critical role in safeguarding the fairness of the process.

Extending the statute of limitations for second-degree sexual assault to ten years or more, would create additional challenges for defendants, particularly given that this is a "specific intent" crime. Prosecutors must prove beyond a reasonable doubt that the defendant acted for the purpose of sexual arousal, gratification, or assault.² In contrast, first-degree sexual assault, a far more serious crime containing a potential sentence of life imprisonment, is not a specific intent crime,

¹ *State v. Lambrechts*, 585 A.2d 645, 646 (R.I. 1991) (emphases in original).

² *State v. Tobin*, 602 A.2d 528, 535 (R.I. 1992).

because it only requires proof of 'penetration' regardless of sexual arousal or gratification. In other words, second-degree sexual assault is a crime depending on *why* the contact happened, where first-degree sexual assault is a crime simply *if* the contact happened. First-degree sexual assault has no statute of limitations.

Courts and juries have struggled with discerning between second-degree sexual assault and accidental contact, especially as time passes. It is likely for this reason that the legislature did not eliminate the statute of limitations for second-degree sexual assault, recognizing that aging evidence and fading memories make it harder for defendants to provide a compelling defense.

While second-degree sexual assault is a serious crime, it is essential to balance the rights of individuals and the fairness of the legal process. The current 3-year statute of limitations achieves that balance.

The Office of the Public Defender urges the Committee to reconsider the proposed extension of the statute of limitations for second-degree sexual assault.

Sincerely,



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