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TESTIMONY OF THE OFFICE OF THE PUBLIC DEFENDER REGARDING:

House Bill No. 7208

ENTITLED, AN ACT RELATING TO CRIMINAL PROCEDURE—ELECTRONIC INFORMATION AND DATA PRIVACY ACT

Chairwoman Hagan McEntee and Members of the House Judiciary Committee:

The Office of the Public Defender has some concerns about House Bill 7208, which requires law enforcement agencies to obtain search warrants for individuals' electronic information, data, location information, and other identifying information, with specified exceptions. While the Public Defender's Office supports the increased protection for Rhode Islanders' data and believes in robust privacy rights, we fear that this bill could unintentionally *increase* the amount of government surveillance over our location and electronic data.

Judicially created case law (based on the Fourth Amendment to the United States Constitution and Article I, section 6 of the Rhode Island Constitution) already allows for the necessary exceptions to the warrant requirement. For example, HB 7208's exception allowing warrantless searches to prevent "death, serious physical injury, sexual abuse, live-streamed sexual exploitation, kidnapping, or human trafficking" already exist in the case law under the exigency exception. As currently written, however, HB 7208 creates *more* warrant exceptions, some of which are extremely concerning.

For example, the exception that would allow remote computing service providers to "voluntarily disclose[] [a subscriber's] location information" is new, and would significantly infringe on citizens' privacy interests. In addition, this exception seems to run afoul of the recent Rhode Island Supreme Court precedent established in *State v. Sinapi*, 295 A.3d 787 (R.I. 2023), where the Court found that individuals have a state constitutional privacy interest in their real-time cell site location information and required the government to seek a warrant before obtaining such data. The proposed bill would allow telecommunication companies, rather than judges, to make the privacy call—a result that raises significant privacy concerns and seems to violate the Rhode Island Constitution.

In addition, the definition of "electronic information or data" contained in § 12-34-2 has several exceptions, such as electronic funds transfers and a wire or oral communications. While the law does not specifically allow warrantless searches for these communications, the canon of statutory construction known as *expressio unius est exclusio alterius* ("the expression of one thing

is the exclusion of another”) could allow a future court to believe that these types of conversations fall outside the warrant requirement entirely.

While the Public Defender’s Office appreciates the policy interests behind the bill—greater protection of electronic data—we are concerned this bill might actually weaken the constitutional privacy protections for our residents.

Sincerely,



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