

OFFICE OF THE PUBLIC DEFENDER

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TESTIMONY OF THE OFFICE OF THE PUBLIC DEFENDER REGARDING:

House Bill No. 8044

ENTITLED, AN ACT RELATING TO COMMERCIAL LAW – GIFT CARD FRAUD

Chairwoman Hagan McEntee and Members of the House Judiciary Committee:

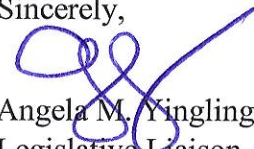
The Office of the Public Defender opposes House Bill 8044, which would subject perpetrators of offenses involving gift cards to the penalties of larceny and/or forgery. The RIPD understands the goal of protecting consumers from gift card scams, but we do not believe this legislation effectively achieves it and may have unintended consequences.

First, almost all the conduct that the bill seeks to criminalize is already covered by existing statutes. Section 6-59-4(a) of the proposed bill states that “[a]ny person who, with intent to defraud, acquires or retains possession of a gift card. . . without the consent of the cardholder, card issuer, or gift card seller” is guilty of larceny. But this conduct is already covered under existing larceny laws—stealing a \$50 gift card is no different than stealing \$50 in cash under the current law. In addition, section (c) covers conduct that is already proscribed by R.I.G.L. § 11-52-2, entitled “Access to computer for fraudulent purposes.” Enacting a new statute to prohibit conduct that is already unlawful would only create redundancy and confusion in the larceny chapter.

In addition, we have concerns about the new conduct that the bill criminalizes. Section (a) would criminalize the acquisition of gift card information with the intent to defraud, and section (b) would criminalize the alteration/tampering of a gift card with the intent to defraud. In both cases, the theft crime would be complete before any taking occurred—meaning that there is no incentive for a would-be thief to change their minds before causing any harm. This creates an inverted “in for a penny, in for a pound” mentality that could backfire on the community.

In conclusion, while we understand gift cards scams are a growing concern, our office believes that H8044 is not the right solution. The bill criminalizes conduct that is already covered in existing statutes and severely penalizes conduct that results in no actual theft.

Sincerely,


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