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TESTIMONY OF THE OFFICE OF THE PUBLIC DEFENDER REGARDING:

House Bill No. 8086

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

Chairwoman Hagan McEntee and Members of the House Judiciary Committee:

The Office of the Public Defender **opposes** House Bill 8086, which would extend the statute of limitations for second degree sex assaults from three to ten years. As the Rhode Island 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 (SOL) exist in the criminal context for three reasons: (1) a valid criminal case should be pursued with reasonable diligence; (2) by the time a stale allegation is litigated, a defendant might have lost evidence necessary to defend against the allegation; and (3) memories fade and evidence grows stale over a period of time.

Our SOL scheme is based on a sliding scale: the more serious the crime, the longer the SOL. For the most serious offenses under RI law, such as murder, robbery, and first-degree sexual assault, there is no SOL at all. One can assume that another reason for this is that in more serious cases, physical and other corroborating evidence is often available and preserved. In less serious cases, where physical and other corroborating evidence is not usually available, SOLs serve the useful purposes described above.

Moreover, second-degree sexual assault is a “specific intent” crime, for it requires proving beyond a reasonable doubt that the defendant’s contact with the victim was for the purpose of the defendant’s sexual arousal or gratification. This requirement is meant to discern between innocent or accidental touching and nefarious assaults. In other words, second-degree sexual assault is a crime based on *why* certain physical contact happened. Presumably, it is for that reason that this charge has always been subject to a lower SOL; with the passage of time, it becomes even more difficult for a defendant to provide a judge or jury with information that could assist them in making this determination.

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

While second-degree sexual assault is a serious crime, it is essential to also consider the rights of the accused and the fairness of the process when determining an appropriate SOL. The current three-year rule achieves that balance. Accordingly, we ask this Committee to reconsider H8086 and reject its passage.

Sincerely,

/s/ Angela M. Yingling

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