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TESTIMONY OF THE OFFICE OF THE PUBLIC DEFENDER REGARDING:

House Bill No. 8065

ENTITLED, AN ACT RELATING TO CRIMINAL OFFENSES—SEXUAL OFFENDER REGISTRATION AND COMMUNITY NOTIFICATION

Chairwoman Hagan McEntee and Members of the House Judiciary Committee:

The Office of the Public Defender **opposes** House Bill 8065, which makes it a felony for any person required to register as a sex offender to live within three hundred feet of a school, as defined in §11-37.1-2. This proposed amendment, which strikes out subsection (d) of that statute and makes edits to subsection (c), is presumably a response to the United States District Court decision in *Chapdelaine v. Neronha*, 662 F.Supp.3d167 (D.R.I. 2023), which declared 11-37.1-2(d) to be unconstitutionally vague.

While we appreciate the decision to remove subsection (d), and to edit a portion of (c), the proposed edits only answer some parts of the vagueness equation. By better defining how the distance is to be measured, the amendments answer one of the federal court's concerns, but several are still left outstanding. For example, the statute states that the distance should be measured in a "straight line, without regard for intervening structures or objects, from the nearest portion of the property on which [the defendant] resides, to the nearest property line of the premises of any school." But, as the Court queried in *Chapdelanie*, how do we determine where that property line is in terms of multi-dwelling units? *Id.* at 175-76. In the case of an apartment, does the property line start at the person's individual property, or are common spaces included? One does not "reside" in the common parking area, but is it considered part of the property? What if it is across the street from the physical apartment? If one owns half of a duplex, does the other half count? One cannot go into the other person's living space without permission, so it would be difficult to say one "resides" there, but one could also argue that the "property on which the defendant resides" could be referring to the property in the aggregate.

The same is true with the amendments to the descriptors of "school" in the statute. While the term "premises of any school" is an improvement over the language that came before it ("real property that supports or upon which there exists a school"), it still does not answer several of questions the Court put forth on *Chapdelanie*, such as, does it include property the school owns or leases (such as a sporting complex), even if that property is separate and apart from the traditional school building? *Id.* at 175.

The Court made a practical, although labor-intensive, suggestion that would eliminate all questions, but the amendments do not include this language: "Again, to be sure, the State could stick

with its case-by-case approach were all the school boundaries compiled in a publicly available forum. To make the hypothetical even more straightforward, assume that this resource also allowed one to input her address to see if its boundary fell within [300] feet of a school boundary. Then, all one must do would be to consult this resource.” *Id.* at 176.

If the state were to create such a database where a person could simply enter the addresses of both properties and be informed of whether or not two properties would be considered to be within three hundred feet of each other, there would be no questions for us to put forth. The statute would simply read, “Any person who knowingly resides within three hundred feet (300’) of any school as determined by the Registry Restriction Database may be imprisoned,” or words to that effect. With such language, we would be hard-pressed to maintain this vagueness argument. But, unfortunately, until such a database is created or the terms “resides” and “premises” are further defined, the vagueness problem remains. Accordingly, the OPD opposes the passage of H8065.

Sincerely,
/s/ Angela M. Yingling

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