

OFFICE OF THE PUBLIC DEFENDER

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TESTIMONY OF THE OFFICE OF THE PUBLIC DEFENDER REGARDING:

House Bill No. 8119

ENTITLED, AN ACT RELATING TO RELATING TO STATE AFFAIRS AND GOVERNMENT -- WARRANTLESS PURCHASES OF PERSONAL DATA -- THE 4TH AMENDMENT IS NOT FOR SALE ACT

Chairwoman Hagan McEntee and Members of the House Judiciary Committee:

The Office of the Public Defender **supports** House Bill 8119, which would prevent law enforcement agencies from buying Rhode Islanders' digital data or sharing such data, although we would propose a couple of small amendments to ensure that it does not inadvertently undercut the very Fourth Amendment principles it is intended to protect.

We think it is extremely important that Rhode Islanders' data is not bought and sold like shares on the stock market, and we applaud the bill's intentions. We just want to ensure that the law *increases* the privacy of our data, as it is meant to do. The federal and state constitutions prevent law enforcement from seizing *any* constitutionally-protected data without a warrant or a judicially-created exception to the warrant requirement—either of which must be based on probable cause. While the statute requires a warrant be based on probable cause to fall into an exception under R.I.G.L. § 42-28.11-2(a)(4)(i), it does not reiterate this requirement in the exigency exception in § 42-28.11-2(a)(4)(ii). In addition, § 42-28.11-2(a)(4)(ii) states that an officer's "good faith" assertion of exigency can trigger the exception. This is not sufficient under the Constitution; under the case law, exigency is analyzed under an "objective standard," meaning that the officer's subjective proffers are irrelevant.

These drafting concerns, however, do not diminish our enthusiasm for more robust protections of our digital data; indeed, we would be happy to work with the bill's sponsors to ensure that it is as protective of our data as it is intended to be.

Sincerely,
/s/ Angela M. Yingling

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