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TESTIMONY OF THE OFFICE OF THE PUBLIC DEFENDER REGARDING:

House Bill No. 8272

ENTITLED, AN ACT RELATING TO CRIMINAL OFFENSES—LAW ENFORCEMENT SEXUAL MISCONDUCT

Chairwoman Hagan McEntee and Members of the House Judiciary Committee:

The Office of the Public Defender **wants to express concerns** with House Bill No. 8272, The proposed legislation is noble in its goal of prohibiting members of law enforcement from engaging in sexual penetration with individuals in their custody—there is never an acceptable reason for that conduct. However, we are concerned that this statute could allow officers accused of *forcible* sexual penetration on contact to be prosecuted under a lesser standard than any other defendant, because they could be charged under this statute instead of the more serious crimes of first- or second-degree sexual assault (which require registration) under R.I.G.L. §§ 11-37-2 and -4.

Rather, to accomplish the aims of this bill, the OPD would suggest simply adding an additional definition to the term "force or coercion" in R.I.G.L. § 11-37-1 (definitions section) or to the elements of first- and second-degree sexual assault as delineated in subsections (2) and (4) of that statute. This has already been done for mentally incapacitated and physically helpless people; it can just as easily be done for those in police custody. This would ensure that sexual assaults perpetrated by law enforcement against those in their custody would be prosecuted the same way as those perpetrated by civilians—reflecting the fact that the mere fact of being detained, in custody, or placed under arrest is inherently coercive.[1]

The OPD suggests that these amendments would better ensure accountability and protect the rights of some of the state's most vulnerable people: our clients. By definition, nearly every one of our clients has spent at least some time in police custody, and thus we applaud any efforts

[1] Indeed, the Rhode Island Supreme Court said as much in *State v. Burke*, 522 A.2d 725, 734-35 (R.I. 1987), a case where a police officer was convicted of two counts of first-degree sexual assault. The Court in *Burke* held that section 11-37-1(c), "force and coercion" included "implied, as well as express threats." 522 A.2d at 764. The Court upheld the officer's convictions of first-degree sexual assault after finding that "[t]he defendant's position of authority, [a police officer] in and of itself, carries with it an implied threat." *Id.* at 735.

to ensure that they are safe and treated with dignity. We would be happy to further discuss our position, as well as our proposed solution, with the bill's sponsors.

Sincerely,

/s/ Angela M. Yingling

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